

No. 12356

United States
Court of Appeals
For the Ninth Circuit.

A. E. WAXBERG and WM. A. BIRKLID,
Appellants,
vs.

ALPHELD HJALMAR NORDALE and AR-
NOLD MAURITZ NORDALE, co-trustees of
the Nordale Estate Trust,
Appellee.

Transcript of Record

Appeal from the District Court for the
Territory of Alaska,
Fourth Division

FILED

DEC 22 1949

PAUL P. O'BRIEN, 
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Fairbanks, Alaska,

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Anchorage, Alaska,

Attorneys for Defendants & Appellants.

In the District Court for the Territory of Alaska,
Fourth Division

No. 5824

ALFHELD HJALMAR NORDALE and ARNOLD MAURITZ NORDALE, Co-trustees of the Nordale Estate Trust,

Plaintiffs,

vs.

A. E. WAXBERG and WM. A. BIRKLID,
Defendants.

AMENDED COMPLAINT

The plaintiffs, by leave of Court first had and obtained, complain of the defendants, and for cause of action allege:

I.

That the plaintiffs are, and at all times herein mentioned have been, the owners in "Trust" of the legal title of all of Lot six (6) in Block Four (4) of the Townsite of Fairbanks, Alaska, Fairbanks Mining and Recording District, Fourth Judicial Division, Territory of Alaska, more particularly described as follows, to wit:

Beginning at Corner #1 which is also the Southeast corner of Lot 6, Block 4, as shown on the official map of the Fairbanks Townsite; Thence N. $11^{\circ}16'$ W 308.0 feet to the present meander line on the left bank of the Chena River, Corner #2; thence downstream along the present meander line on the left bank of the Chena River to Corner #3; thence S

11°37' E 209.19 feet to Corner #4 which is also the Southwest corner of Lot 6, Block 4; thence N. 79°10' E 106.0 feet to the point of beginning; and entitled to the possession thereof, by virtue of a Deed of Conveyance from Anna Mathilda Nordale to the plaintiffs, dated November 4, 1940, and recorded in the Recorder's Office of Fairbanks Recording Precinct, December 12, 1940, in Volume 30, of Deed Records, on page 133, as document No. 87739, a copy of which Deed is attached hereto and made a part hereof as "Exhibit A," and by virtue of accretions due to the natural action of the Chena River.

II.

That the plaintiffs are Co-Trustees of the Nordale Estate Trust by virtue of the terms of a Declaration of Trust executed on the 4th day of November, 1940, by virtue of which Declaration of Trust the plaintiffs are authorized to bring this suit for the protection of the Trust Estate property; which Declaration of Trust was filed for record in the Recorder's Office of Fairbanks Recording Precinct on December 12, 1940, in Volume 8 of Miscellaneous Records, at page 450, as document No. 87740, a copy of which Declaration of Trust is hereto attached and made a part hereof as "Exhibit B."

III.

That the plaintiffs were in possession of all of said Lot six (6) in Block Four (4) of the Townsite of Fairbanks, Alaska, as above described, from on

or about the 4th day of November, 1940, down to the 13th day of March, 1948, when the defendants on the latter date entered into possession of a portion of said land, which portion is described as follows:

Beginning at Corner Number 1, which is a point 125 feet North $11^{\circ}16'$ West of the Southeast Corner of Lot 6, Block 4 of the Townsite of Fairbanks, Alaska; thence South $78^{\circ}44'$ West, 109.26 feet to the corner Number 2; thence North $11^{\circ}37'$ West, approximately 105 feet to the present meander line on the South side of the Chena River, which point is Corner Number 3; thence upstream along the present meander line of the South side of the Chena River to Corner Number 4, which is a point at the intersection of the present South meander line of the Chena River and the East side of Lot six (6), Block 4 extended; thence South $11^{\circ}16'$ East to Corner 1 and the point of beginning, and ousted the plaintiffs therefrom, and ever since then and now the said defendants unlawfully withhold the possession of said portion of Lot six (6) in Block four (4) of the Townsite of Fairbanks, Alaska, from the plaintiffs, to the damage of the plaintiffs and the Nordale Estate Trust, in the sum of Ten thousand and no/100 (\$10,000.00) Dollars.

IV.

That the plaintiffs have demanded of the defendants the possession of said premises so unlawfully entered upon by the defendants, and served notice on the defendants not to trespass upon said premises, but that notwithstanding this, the defendants have

refused to deliver possession thereof to the plaintiffs and that said defendants still refuse so to do.

V.

That it has been necessary for the plaintiffs to employ an attorney to prosecute this suit and that they have employed an attorney for that purpose, and that, therefore, they are entitled to have and recover from the defendants the sum of Fifteen hundred and no/100 (\$1500.00) Dollars for a reasonable attorney's fee.

Wherefore, the plaintiffs pray judgment against the defendants as follows:

1. That the plaintiffs may recover possession of the premises now held by the said defendants;
2. For the sum of Ten Thousand and no/100 (\$10,000.00) Dollars damages;
3. For the sum of Fifteen hundred and no/100 (\$1500.00) Dollars attorney's fees;
4. For their costs and disbursements herein.

/s/ MAURICE T. JOHNSON,
Attorney for Plaintiffs.

United States of America, Territory of Alaska,
Fourth Judicial Division—ss.

Alfheld Hjalmar Nordale, being first duly sworn on oath, deposes and says: That he is one of the plaintiffs in the above-named cause; that he has read the foregoing Amended Complaint; that he knows the contents thereof, and that the same is true, as he verily believes.

/s/ ALFHELD HJALMAR
NORDALE.

Subscribed and sworn to before me this 22nd day of September, 1948.

[Seal] /s/ MAURICE T. JOHNSON,

Notary Public for Alaska.

My commission expires 4/17/52.

Receipt of copy acknowledged.

EXHIBIT A

DEED OF CONVEYANCE (Copy)

Know All Men by These Presents: That I, Anna Mathilda Nordale, of Fairbanks, Alaska, as Grantor and first party, do hereby grant, bargain, sell, assign, transfer, and set over unto Alfheld Hjalmar Nordale, of Fairbanks, Alaska, and Arnold Mauritz Nordale, of Dawson, Yukon Territory, as Grantees and Trustees, and upon the terms and conditions set forth in a certain Declaration of Trust this day executed by said Trustees, reference to which is hereby made for further particulars, all of the following described property situated in the Fairbanks Mining and Recording District, Fourth Division, Territory of Alaska, and more particularly described as follows, to wit:

1244 shares of the common capital stock of the Nordale Hotel Corporation;

Lots Four (4) and Six (6) in Block Four (4); and Lots One (1), Two (2), Three (3) and Five (5)

in Block Sixty-nine (69); and Lot Seven (7) in Block Seventy-eight (78) of the town of Fairbanks, Alaska, according to the map and plat thereof on file in the office of the City Clerk of said town of Fairbanks, Alaska, and known as the "L. S. Robe Plat"; and all buildings and improvements located thereon; and

The following described patented quartz mining claims, to wit: Hope Lode Claim, Fairbanks Claim, Keystone Claim, Kawilita Claim, a more particular description of which is set forth in the patent granted by the United States to A. J. Nordale, which said patent is recorded in Volume 19 of Deeds, at page 591 thereof, of the records of said Fairbanks Recording District; and also

That certain unpatented quartz mining claim known as the Wolf Lode Claim, which said claim is bounded on the South by said Keystone Claim and on the east by said Fairbanks Claim.

Together With, all and singular, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

To Have and to Hold the same unto the said Trustees, upon the terms and conditions set forth under said Declaration of Trust hereinabove referred to.

In Witness Whereof, I have hereunto set my hand and seal on this, the 4th day of November, in the year one thousand nine hundred forty, A.D.

In the presence of:

/s/ JOHN L. McGIVEN,

/s/ DOROTHY RUSSELL,

[Seal] /s/ ANNA MATHILDA NORDALE.

United States of America,

Territory of Alaska—ss.

This Is To Certify That on this, the 4th day of November, 1940, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Anna Mathilda Nordale, known to me to be the identical individual named in and who executed the foregoing instrument, and she acknowledged to me that she did so freely and voluntarily, for the uses and purposes mentioned therein.

Witness My Hand and Notarial Seal the day and year in this certificate first above written.

[Seal] /s/ DOROTHY RUSSELL,
Notary Public in and for the Territory of Alaska.
My commission expires: Nov. 16, 1942.

EXHIBIT B

Declaration of Trust (Copy)

Know All Men by These Presents: That we, Alfheld Hjalmar Nordale, of Fairbanks, Alaska, and Arnold Mauritz Nordale, of Dawson, Yukon Territory, do hereby admit, certify, and declare that upon this date there has been transferred, as-

signed, and conveyed to us, as grantees and Trustees, by Anna Mathilda Nordale, of Fairbanks, Alaska, as grantor and Trustor, the following described real and personal property, situate in the Fairbanks Mining and Recording District, Fourth Division, Territory of Alaska, to-wit:

1244 shares of the common capital stock of the Nordale Hotel Corporation;

Lots Four (4) and Six (6) in Block Four (4); and Lots One (1), Two (2), Three (3), and Five (5) in Block Sixty-Nine (69); and Lot Seven (7) in Block Seventy-eight (78) of the Town of Fairbanks, Alaska, according to the map and plat thereof on file in the office of the City Clerk of said town of Fairbanks, Alaska, and known as the "L. S. Robe Plat"; and

The following described patented quartz mining claims, to-wit: Hope Lode Claim, Fairbanks Claim, Keystone Claim, Kawilita Claim, a more particular description of which is set forth in the patent granted by the United States to A. J. Nordale, which said patent is recorded in Volume 19 of Deeds, at page 591 thereof, of the records of said Fairbanks Recording District; and also

That certain unpatented quartz mining claim known as the Wolf Lode Claim, which said claim is bounded on the south by said Keystone Claim and on the east by said Fairbanks Claim.

The conveyance and transfer of said property has been accepted by us as trustees, and we hereby declare and agree that we will hold said property, and

all other funds and property at any time transferred to and received by us, in trust hereunder for the following named persons and upon the following terms and conditions, to-wit:

(1) In Trust, during the life of Anna Mathilda Nordale, herein known as the Trustor, for her sole and exclusive use and benefit, and it is an express condition and provision of this trust, that, during the life of said Trustor, she shall have the right and shall be allowed to continue in the full, free, and undisturbed possession of the trust estate—save and except said stock of the Nordale Hotel Corporation and of the mining claims hereinabove described—without any rental or accounting for the rents or issues derived therefrom to said Trustees, or to any of the beneficiaries under this trust.

(2) In Trust—upon the death of said Trustor—and for the sole use and benefit of the following named persons, to-wit:

Alfheld Hjalmar Nordale, of Fairbanks, Alaska; Arnold Mauritz Nordale, of Dawson, Yukon Territory; Anita Mildred Cox, of Tiburon, California; Katherine Driscoll Nordale, of Fairbanks, Alaska; Adler Jennings Nordale, of Fairbanks, Alaska, and Alice Dolores Couey, of Fairbanks, Alaska, said above named persons being trust beneficiaries only, and their respective beneficial interest in said trust estate is as follows:

Alfheld Hjalmar Nordale, an undivided 5/15 interest; Arnold Mauritz Nordale, an undivided 2/15 interest; Anita Mildred Cox, an undivided 2/15 in-

terest; Katherine Driscoll Nordale, an undivided 2/15 interest; Adler Jennings Nordale, an undivided 2/15 interest, and Alice Dolores Couey, an undivided 2/15 interest.

(3) In Trust—save and except as provided in paragraph (1) hereof—to collect and receive all rents and incomes from said property, and semi-annually, or oftener, at their convenience, to distribute such portion thereof as they may, in their discretion, determine to be fairly distributable net income, to the Trustor or the said beneficiaries, as hereinabove provided, according to their respective interest; and, in this connection, the Trustees shall have full authority from time to time to use any funds on hand, whether received as capital or income, for the purposes of any repair, improvement, protection, or development of the properties held hereunder (save and except that the said Trustees herein shall not engage in or carry on, except as lessors, any mining operations), or the acquisition of any property as to the Trustees may be determined to be wise and expedient, for the protection and development of the trust property as a whole, pending its conversion and distribution. The determination of the Trustees, made in good faith as to all questions as between “capital” and “income,” shall be final.

(4) In Trust, pending final conversion and distribution of the property, to manage and control the same, the Trustees having for such purposes all and as full discretionary power and authority as

they would have if they were themselves the sole and exclusive beneficial owners thereof, including the right to vote said stock of the Nordale Hotel Corporation as in their judgment may seem most advisable.

(5) In Trust, pending final conversion and distribution, by and with the consent, in writing, of a majority in interest of the beneficiaries, to sell, lease, bond, mortgage, and exchange any of the property belonging to the trust; and, in addition to the power and authority conferred upon the Trustees by paragraph (3) hereof, to repair, improve, protect, and develop the property of the trust out of funds in the hands of the Trustees, the Trustees may, by and with the consent in writing of a majority in interest of the beneficiaries, borrow money to make repairs, and improvements, and to develop and acquire other properties which they deem essential and beneficial to the trust; and for said purposes the Trustees may fix the time of any loan and may pledge and mortgage any of the properties of the trust as security therefor, as they deem advisable.

(6) The Trustees may employ all such agents and attorneys as they may think proper, and find expedient, and prescribe their powers and duties, and shall not be personally responsible for any misconduct, errors, or omissions of such agents or attorneys employed and retained, with reasonable care.

(7) The Trustees shall at all times keep full and

proper books of account and records of their proceedings and business and shall, at least annually, render account of the trust to any beneficiary requesting the same, but no Trustee serving hereunder shall be obliged to give any bond, nor shall any Trustee have any liability, except for the result of his own gross negligence or bad faith.

(8) The Trustees shall be entitled to receive reasonable compensation for services, not exceeding one per cent. (1%) of the total gross annual income received by them as such Trustees; unless, hereafter, a majority in interest of the beneficiaries shall consent in writing to some larger compensation. The Trustees shall also be entitled to reimbursement and indemnification for all proper expenses, and shall be entitled at all times to the advice of counsel.

(9) Any Trustee hereunder may resign by a written instrument, duly acknowledged, and attached to the original of this instrument or recorded with the Recorder of the Fairbanks Recording District of Alaska. Any vacancy in the office of Trustee, however occasioned, shall be filled by the remaining Trustee by an instrument in writing, signed by him, and assented to in writing by the holders of a majority in interest of the beneficiaries. Such appointment to be in like manner attached to the original of this instrument or recorded in said Recording District, as in the case of the resignation last above provided for.

(10) In the event of the absence from the Territory of Alaska of either of the Trustees here-

under, or in the event that either of said Trustees is incapacitated, through illness or otherwise, from performing his duty as Trustee, then the other Trustee shall, at such time or times, have and may exercise any and all the powers given to the Trustees hereunder, with like effect as if similarly exercised by both of them.

(11) The terms and provisions of this trust may be modified at any time by instruments in writing signed and sealed and acknowledged by the then Trustees, and assented to in writing, by the holder or holders of the majority in interest of the beneficiaries, attached to the original of this instrument or recorded with the Recorder of said Fairbanks Recording District.

(12) The certificate in writing of the Trustee as to any resignation from the office of Trustee hereunder and as to the appointment of any new Trustee hereunder, and as to the existence or non-existence of any modification hereof, may always be relied upon and shall always be conclusive evidence in favor of all persons dealing in good faith with said Trustees and relying upon such certificate.

(13) The title for this trust (fixed for convenience) shall be "Nordale Estate Trust", and the term "Trustees" in this instrument shall be deemed to include the original and all successive Trustees.

(14) The life of this trust shall continue for a period of twenty (20) years after the death of the Trustor, Anna Mathilda Nordale, but said Trustees, by and with the consent of a majority in interest of

the beneficiaries, may convert said estate into money and distribute any proceeds thereof among the beneficiaries entitled thereto at any time within said period of twenty (20) years, until the estate herein or the property hereunder is fully converted and distributed to the beneficiaries; and the respective interests of the beneficiaries hereunder, for the purposes of transmission and otherwise, shall be deemed personal property.

At the end of twenty (20) years from and after the death of said Trustor (unless the estate shall sooner be converted and distributed and said trust lawfully terminated), all property of every kind then held hereunder shall be sold by the Trustees, and equitable distribution made by them of the net proceeds among the persons then entitled thereto, unless the majority in interest of the beneficiaries shall elect to extend the life of this trust beyond that period.

In Witness Whereof, the said Trustees have hereunto set their hands and seals in triplicate on this 4th day of November, in the year one thousand nine hundred forty, A.D.

[Seal] /s/ ALFHELD HJALMAR
NORDALE, Trustee.

[Seal] /s/ ARNOLD MAURITZ
NORDALE.

In the presence of:

/s/ J. L. BLOCKHUS.

/s/ DOROTHY RUSSELL.

/s/ A. F. DAILY.

/s/ M. E. A. SEALY.

United States of America,
Territory of Alaska—ss.

This Is to Certify That on this, the 4th day of November, 1940, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Alfheld Hjalmar Nordale, personally known to me to be the identical individual named in and who executed the foregoing Declaration of Trust as Trustee thereunder, and he acknowledged to me that he did so freely and voluntarily, for the uses and purposes mentioned therein.

Witness my hand and Notarial Seal the day and year in this certificate first above written.

[Seal] /s/ DOROTHY RUSSELL,
 Notary Public in and for the
 Territory of Alaska.

My Commission expires Nov. 16, 1942.

[Endorsed]: Filed and Lodged Sept. 22, 1948.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto that the plaintiffs above named may have leave of Court to file their Amended Complaint herein.

Dated at Fairbanks, Alaska, this 22nd day of September, 1948.

/s/ MAURICE T. JOHNSON,
Attorney for Plaintiffs.

/s/ WARREN A. TAYLOR,
Attorney for Defendants.

[Endorsed]: Filed Sept. 22, 1948.

[Title of District Court and Cause.]

ORDER

Upon the Stipulation of the parties, by their respective attorneys, and the Court being fully advised in the premises;

It Is Hereby Ordered that the plaintiffs above named, be, and they are hereby, given leave to file their Amended Complaint herein instanter.

Done at Fairbanks, Alaska, this 22nd day of September, 1948.

/s/ HARRY E. PRATT,
District Judge.

Receipt of copy acknowledged.

Entered Sept. 22, 1948.

[Endorsed]: Filed September 22, 1948.

[Title of District Court and Cause.]

**ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT**

Comes now the defendants herein and for answer to Plaintiffs' Amended Complaint on file herein, admit, deny and allege as follows, to-wit:

I.

Answering Paragraph I of Plaintiffs' Amended Complaint, Defendants admit that the Plaintiffs are the owners of Lot 6 of Block 4 of the Townsite of Fairbanks, Fairbanks Precinct, Fourth Division, Territory of Alaska, but deny that the description of said lot contained in said paragraph I is a full, true and correct description of said Lot 6 of Block 4, and further deny that there are any accretions to said lot by reason of the natural action of the Chena River.

II.

Defendants admit the allegations contained in Paragraph II of Plaintiffs' Amended Complaint.

III.

Defendants admit that they entered upon the lands described in Paragraph III of Plaintiffs' Amended Complaint, but deny that they ousted the Plaintiffs therefrom, and further deny that they are unlawfully holding possession of said Lot 6 in Block 4 of the Townsite of Fairbanks, Alaska, or any part thereof, from the Plaintiffs.

IV.

Defendants admit all the allegations contained in Paragraph IV of Plaintiffs' Amended Complaint,

and allege that they are lawfully in possession of the said lands described therein.

V.

Defendants deny each and every allegation contained in paragraph V of Plaintiffs' Amended Complaint.

Wherefore, having fully answered Plaintiffs' Amended Complaint, Defendants pray that Plaintiffs take nothing by their action and that the Defendants have and recover their costs and disbursements incurred herein.

/s/ WARREN A. TAYLOR,
Attorney for Defendants.

United States of America,
Territory of Alaska—ss.

A. E. Waxberg, being first duly sworn upon oath, deposes and says: That he is one of the defendants named in the above-entitled cause; that he has read the foregoing Answer to Plaintiff's Amended Complaint, knows the contents thereof, and that the same are true as he verily believes.

/s/ A. E. WAXBERG.

Subscribed and sworn to before me this 1st day of October, 1948.

/s/ WARREN A. TAYLOR,
Notary Public in and for
Alaska.

My Commission expires August 11, 1951.

My Commission expires 8/11/51.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 4, 1948.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto that the Deposition of Fred Parker, Sr., a material witness for the plaintiff in the above-entitled cause, may be taken for the reason that the said witness will be unable to attend the trial of this case, which Deposition may be taken before Mike Stepovich, Jr., a Notary Public in and for the Territory of Alaska, at 4:00 o'clock p.m. on the 29th day of September, 1948, in the office of Maurice T. Johnson, Attorney at Law, Fairbanks, Alaska; and it is further stipulated and agreed, by and between the parties, that this Deposition may be taken without notice as required by Statute, and may be taken in pursuance of the Commission issued by the Clerk of this Court.

It is further stipulated and agreed that either party, during the taking of this Deposition, does not waive the right to object to any question asked or any answer given at the time the Deposition is offered and read in evidence upon the trial of this case, and both parties reserve the right to make any and all objections when the Deposition is read in evidence at the trial.

It is further stipulated and agreed, by and between the parties, that the Deposition may be offered and read in evidence without the signature of the witness, and that the signature of said witness is specifically waived.

Dated at Fairbanks, Alaska, this 29th day of September, 1948.

/s/ MAURICE T. JOHNSON,
Attorney for Plaintiffs.

/s/ WARREN A. TAYLOR,
Attorney for Defendants.

[Endorsed]: Filed Oct. 9, 1948.

[Title of District Court and Cause.]

OPINION

Maurice T. Johnson, of Fairbanks, Alaska, Attorney for Plaintiffs.

Warren A. Taylor, of Fairbanks, Alaska, Attorney for Defendants.

The Plaintiffs and their predecessors in interest were riparian owners of land upon the Chena River, which, in May, 1903, formed the North boundary of the Town of Fairbanks, Alaska, as well as the North boundary of Plaintiffs' lot. Between 1903 and March 13, 1948, land formed onto Plaintiffs' land along the river bank until the river was pushed Northward about two hundred feet. The Plaintiffs claim this land as theirs, as being alluvion formed by accretion from deposits of the water gradually and imperceptibly. The Defendants have taken possession of a part of said alluvion under the claim that it was formed by artificial means, to-wit, by filling in, and that therefore it was open to entry

by Defendants. This is an action in the nature of ejectment.

The evidence shows that between 1903 and 1948, there was a gradual and imperceptible deposit of silt along the river bank adjacent to Plaintiffs' lot until there was a piece of dry land between the side lines of Plaintiffs' lot extended Northward, and the new river bank approximately two hundred feet Northward from the original North boundary.

The Defendants dug three pits in the alluvion within approximately 75 feet of the original North boundary line of Plaintiffs' lot. These pits were two, four and six feet in depth respectively, and approximately six feet long by four feet wide. They showed that some tin cans and other debris were mixed in with the alluvion as it had built up. The amount of such debris was an infinitesimal percent of the amount of alluvion and there was nothing in it to show that it had had any effect upon the forming of the alluvion. The evidence clearly showed that Plaintiffs and their predecessors in interest had known nothing about the deposit of such debris, and that it had been done entirely by third persons.

By Act approved June 6, 1900, Congress, in making laws for the government of Alaska, provided that "So much of the common law as is applicable to and not inconsistent with the Constitution of the United States, or with any law passed or to be passed by the Congress is adopted and declared to be law within the District of Alaska". 31 Stat. 552, Sec. 367; Sec. 2-1-2, Alaska Compiled Laws An-

notated, 1949. This section was amended in 1933 subjecting the common law to acts passed by the Territorial Legislature, but otherwise it remains unchanged today.

The great weight of authority is that the law respecting the acquisition of title by accretion is independent of the law respecting the title to soil covered by water. *Shively vs. Bowlby*, 152 U. S. 35.

At common law the riparian owner acquires title to additions thereto by accretion. *Oklahoma vs. Texas*, 268 U. S. 252-256; 56 Am. Jur. 892; Note 18: page 901, Sec. 490; page 895. Note 20.

Even if Defendants had shown that debris had been deposited artificially in such quantities as to increase the deposit by accretion, it would nevertheless have been immaterial as the riparian owner had no part in making the artificial deposits.

St. Clair County vs. Lovingston, 23 Wallace 46-66;

Jackson vs. U. S. (C.C.A. 9th) 56 Fed. (2) 340;

Forgeus vs. Santa Cruz County (Cal.) 140 Pac. 1092;

Adams vs. Roberson (Kans.) 155 Pac. 22;
Tatum vs. St. Louis (Mo.) 28 S.W. 1002;
Frank vs. Smith (Neb.) 393 N.W. 329; 134 A.L.R. 458-468;

Re Neptune Avenue (N. Y.) 262 N. Y. S. 679;

Re Hutchinson River Parkway Extension, 14 N. Y. S. (2) 692. Affirmed 33 N.E. (2) 252;

State vs. Lakefront, etc., (Ohio) 27 N.E. (2) 485; Gillihan vs. Cieloha (Or.) 145 Pac. 1061; Horgan vs. Jamestown (R. I.) 80 Atl. 271; Memphis vs. Waite (Tenn.) 52 S.W. 161; 56 Am. Jur., page 899, Note 15e; page 894, note 1.

The Defendants do not admit that the South bank of the Chena River was the boundary of the Townsite of Fairbanks, and of Plaintiffs' lot, afterwards shown by the Official Survey of L. S. Robe in 1909, and the plat thereof to be Lot 6 in Block 4, of the Fairbanks Townsite, Alaska. This map, Plaintiffs' Exhibit "F," shows the Fairbanks Townsite to be bounded by the Chena River on the East and North sides. There is a dotted meander line running from point to point on or close to the bank of the river, and the lots on said meander line are bounded by the dotted line on that one side, and solid lines on the other three sides.

The rule is quoted from 7 Wall. 287 in Shively vs. Bowlby, 152 U. S. 39: "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes, the meander line is represented as the border line of

the stream, and shows, to a demonstration, that the watercourse, and not the meander line as actually run on the land, is the boundary."

In *Whitaker vs. McBride*, 197 U. S. 510-512, it is stated: "A meander line is not a line of boundary, but one designed to point out the sinuosity of the bank or shore, and a means of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser."

To the same effect are:

8 Am. Jur. 76;

11 C.J.S. 573, Note 79.

The water and not the meander line is the boundary. *Horne vs. Smith*, 159 U. S. 40, 42, in which the Court said: "The basis of this contention is the familiar rule that a meander line is not a line of boundary, and that a patent for a tract of land bordering on a river conveys the land, not simply to the meander line, but to the water line, * * *."

In *Mitchell vs. Smale*, 140 U. S. 406, the court held, as to a non-navigable lake, page 414: "It has been decided again and again that the meander line is not a boundary, but that the body of water whose margin is meandered is the true boundary."

In *Hilt vs. Webber*, 233 N.W. 159; 31 A.L.R. 1238, it was held that the boundary line of riparian owners along the Great Lakes is the waters' edge, and not the meander line. The riparian owner has the right to accretion.

The witness, Fred Parker, one of Plaintiffs' predecessors in interest, testified that he and Charles

Carroll purchased the lot in May, 1903, for a site for a saw mill; that the lot ran along the South bank of the Chena River for more than 100 feet and extended back from the river some seventy feet; that they built a slip from the top of the river bank down way below the water line so that they could pull the logs up it at extreme low water and otherwise; that there was a natural eddy in the river at the foot of the slip which made an ideal mill pond. He told of operating said saw mill for the years 1903, 1904, 1905 and perhaps 1906, and that each year the mill pond grew shallower. Other witnesses corroborated Mr. Parker, and no-one contradicted him.

It seems clear, and the Court so holds, that the Chena River was the North boundary of the lot of Plaintiffs and their predecessors in interest, and continued to be such North boundary at all times mentioned in this case.

That all of such land formed by accretion was above the normal high water mark was asserted by all the parties to this action and shown by the levels run by the surveyor, and shown on Plaintiffs' Exhibit "G." It is also shown by Defendants' Exhibit "4," a portion of a tree growing upon the river bank on the ground in controversy.

A deed from Peter Vachon to A. H. Nordale, of date July 14, 1928, Plaintiffs' Exhibit "B," expressly describes the North boundary of Plaintiffs' lot as being the Chena River.

Plaintiffs' Exhibit "A" (the Trustee's deed or

patent), executed March 1, 1922, in favor of Peter Vachon and A. H. Nordale, conveys "Lot 6, Block 4 according to the official plat and survey of said Townsite." As the official survey and plat showed the North boundary of Plaintiffs' lot to be the river as mentioned above, and the ground in controversy had been formed gradually and imperceptibly by accretion, it is the property of the Plaintiffs, and they are entitled to recover possession thereof from the Defendants.

The value of the use of said ground since March 1, 1948, is \$25.00 per month, and the Plaintiffs have been damaged in such amount and may recover the same from the Defendants in this action.

Findings of Fact, Conclusions of Law and Judgment accordingly may be drawn.

Done at Fairbanks, Alaska, this 13th day of June, 1949.

/s/ HARRY E. PRATT,
District Judge.

Served June 13, 1949.

[Endorsed]: Filed June 13, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the above-named defendants, by their attorney, Warren A. Taylor, and move this Honorable Court to set aside and vacate its verdict in

the above-entitled action and grant a new trial, for the following reasons:

I.

That the evidence is insufficient to justify the verdict and is contrary to law, to-wit: That the burden of proof was upon the plaintiffs to prove by a preponderance of the evidence that the land described in said plaintiffs' complaint was formed by accretion, and that there was a total failure of proof of the same.

II.

That the Court, in arriving at its verdict in favor of the plaintiffs, failed to take into consideration defendants' evidence that the land in question was not an accretion but was formed by the deposit of waste and debris on the shore.

Dated at Fairbanks, Alaska this 16th day of June, 1949.

/s/ WARREN A. TAYLOR,
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed June 16, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Be It Remembered that this cause came on regularly for trial on the 9th and 10th days of May,

1949, at which time the said cause had theretofore been regularly set for trial, said days being regular Court days of the General May 1949 Term of the above-entitled Court. The said cause was tried before the above-entitled Court without a jury, a jury having been waived by agreement of the parties.

The said cause was heard and submitted upon the issues presented by the Amended Complaint of the Plaintiffs and the Answer of the Defendants. The Plaintiff, Alfheld Hjalmar Nordale, appeared in person and by his attorney, Maurice T. Johnson, and the Plaintiff, Arnold Mauritz Nordale, appeared by his attorney, Maurice T. Johnson. The Defendants appeared in person and by their attorney, Warren A. Taylor. The Plaintiffs and the Defendants introduced testimony and the Court having considered the proofs and evidence in said cause, and having heard the arguments of counsel and having taken the matter under advisement, and being fully advised in the premises, after consideration thereof, does hereby make and order filed and entered herein the following:

Findings of Fact

I.

The Court finds that the Plaintiffs are the owners in "Trust" of the legal title of all of Lot six (6) in Block Four (4) of the Townsite of Fairbanks, Alaska, Fairbanks Recording District, Fourth Judicial Division, Territory of Alaska, ac-

cording to the official plat and survey made by W. S. Robe, C.E., in 1909, and that Plaintiffs and their predecessors in interest have been such owners at all times since May, 1903.

II.

The Court further finds that the north boundary of said lot in May, 1903, was the south bank of the Chena River, which was also the north boundary of said Fairbanks Townsite at that time.

III.

The Court further finds that between 1903 and March 13, 1948, land formed by accretion onto the Plaintiffs' north boundary along the said bank of the Chena River, until the river was pushed northward about 200 feet; and that said accretion was formed by a gradual and imperceptible deposit by accretion of silt along said river bank adjacent to the Plaintiffs' lot during said time until there was a piece of dry land between the side lines of the Plaintiffs' lot extended northward between the original north boundary of said lot and the present bank of the Chena River. Said dry land, herein-after called "the accretion," is more particularly described as follows, to wit:

Beginning at Corner #1, which is the original Northeast corner of Lot 6, as shown on the official plat of the Town of Fairbanks, being Plaintiffs' Exhibit "F," thence North $11^{\circ}16'$ W. 235.15 feet, more or less, to the Chena River, being Corner #2; thence downstream along the said Chena River a

distance of 143.75 feet, more or less, to Corner #3; thence South 11°37' East 151.76' to Corner #4, which is also the original Northwest corner of Lot 6 in Block 4, as shown by the official map of the Townsite of Fairbanks, being Plaintiffs' Exhibit "F", thence in an Easterly direction along the original north boundary of said Lot 6, Block 4, as shown by the official map of the Townsite of Fairbanks, being Plaintiffs' Exhibit "F," a distance of 108.05 feet, more or less, to Corner #1, the place of beginning.

IV.

The Court further finds that the Defendants dug three pits in the accretion within approximately 75 feet of the original north boundary line of Plaintiffs' lot. These pits were two four and six feet in depth respectively, and approximately six feet long by four feet wide. They showed that some tin cans and other debris were mixed in with the accretion as it had built up. The amount of such debris was an infinitesimal percent of the amount of accretion and there was nothing in it to show that it had had any effect upon the forming of the accretion. The evidence clearly showed that Plaintiffs and their predecessors in interest had known nothing about the deposit of such debris, and that it had been done entirely by third persons.

V.

The Court further finds that the official survey of the Townsite of Fairbanks, Alaska, as shown by

Plaintiffs' Exhibit "F," shows the Fairbanks Townsite to be bounded by the Chena River on the east and north sides; and that there is a dotted meander line running from point to point on or close to the bank of the river and the lots on said meander line are bounded by the dotted line on that one side and by solid lines on the other three sides.

VI.

The Court further finds that Plaintiffs' Exhibits "A" and "B" (deeds), expressly show said river to be the north boundary of said lot as extended by accretion.

VII.

The Court further finds that the Chena River was the north boundary of the lot of the Plaintiffs and their predecessors in interest and continued to be such north boundary at all times mentioned in this case; and that all of such land formed by accretion was above the normal high water mark was asserted by all of the parties to this action and was shown by the levels run by the surveyor and shown on Plaintiffs' Exhibit "B," and also shown by Defendants' Exhibit "4," a portion of a tree growing upon the river bank upon the ground in controversy.

VIII.

The Court further finds that the Plaintiffs are Co-Trustees of the Nordale Estate Trust by virtue of the terms of a Declaration of Trust executed on the 4th day of November, 1940, by virtue of

which Declaration of Trust the Plaintiffs are authorized to bring this suit for the protection of the Trust Estate property, which Declaration of Trust was filed for record in the Recorder's Office of Fairbanks Recording Precinct on December 12, 1940, in Volume 8 of Miscellaneous Records at page 450, as document No. 87740.

IX.

The Court further finds that the Plaintiffs were in possession of all of said Lot Six (6) in Block Four (4) of the Townsite of Fairbanks, Alaska, and of said accretion as above described, from on or about the 4th day of November, 1940, down to the 13th day of March, 1948, when the Defendants on the latter date unlawfully entered into possession of a portion of said land, which portion is described as follows:

Beginning at Corner Number 1, which is a point 125 feet North $11^{\circ}16'$ West of the Southeast Corner of Lot 6, Block 4 of the Townsite of Fairbanks, Alaska; thence South $78^{\circ}44'$ West, 109.26 feet to Corner Number 2; thence North $11^{\circ}37'$ West, approximately 105 feet to the present meander line on the South side of the Chena River, which point is Corner Number 3; thence upstream along the present meander line of the South side of the Chena River to Corner Number 4, which is a point at the intersection of the present South meander line of the Chena River and the East side of Lot Six (6), Block 4 extended; thence South $11^{\circ}16'$ East to Corner 1 and the point of beginning.

And ousted the Plaintiffs therefrom, and ever since then and now the said Defendants unlawfully withhold the possession of said portion of Lot Six (6) in Block Four (4) as extended by accretion, of the Townsite of Fairbanks, Alaska, from the Plaintiffs, to the damage of the Plaintiffs and the Nordale Estate Trust in the sum of \$25.00 per month since March 13, 1948, making a total sum to date of \$375.00.

X.

The Court further finds that the Plaintiffs have demanded of the Defendants the possession of said premises so unlawfully entered upon by the Defendants, and served notice on the Defendants not to trespass upon said premises, but that notwithstanding this, the Defendants have refused to deliver possession thereof to the Plaintiffs and that said Defendants still refuse so to do.

XI.

The Court further finds that it has been necessary for the Plaintiffs to employ an attorney to prosecute this suit and that they have employed an attorney for that purpose and that therefore the Plaintiffs are entitled to have and recover from the Defendants the sum of \$400.00 which the Court finds to be a reasonable attorney's fee herein.

and

From the foregoing Findings of Fact, the Court does now make and enter the following:

Conclusions of Law

I.

That the ground in controversy in this case is the property of the Plaintiffs and that the Plaintiffs are entitled to recover the possession thereof from the Defendants.

II.

That the Plaintiffs are entitled to have and recover of and from the Defendants the sum of \$25.00 per month from the 13th day of March, 1948, as damages for the wrongful possession of property, which damages to date amount to the sum of \$375.00.

III.

That the Plaintiffs are entitled to recover of and from the Defendants the sum of \$400.00 as and for their reasonable attorney's fee and their costs and disbursements herein to be taxed by the Clerk of this Court.

IV.

Let Judgment issue in accordance herewith.

Done at Fairbanks, Alaska, this 17th day of June, 1949.

/s/ HARRY E. PRATT,
District Judge.

Entered June 17, 1949.

Receipt of copy acknowledged.

[Lodged]: June 16, 1949.

[Endorsed]: Filed June 17, 1949.

In the District Court for the Territory of Alaska,
Fourth Division

No. 5824

ALFHELD HJALMAR NORDALE and AR-
NOLD MAURITZ NORDALE, co-trustees of
the Nordale Estate Trust,

Plaintiffs,

vs.

A. E. WAXBERG and WM. A. BIRKLID,
Defendants.

JUDGMENT

Be It Remembered that this cause came on regularly for trial on the 9th and 10th days of May, 1949, at which time the said cause had theretofore been regularly set for trial, said days being regular Court days of the General May 1949 Term of the above-entitled Court. The said cause was tried before the above-entitled Court without a jury, a jury having been waived by agreement of the parties.

The said cause was heard and submitted upon the issues presented by the Amended Complaint of the Plaintiffs and the Answer of the Defendants. The Plaintiff, Alfheld Hjalmar Nordale, appeared in person and by his attorney, Maurice T. Johnson, and the Plaintiff, Arnold Mauritz Nordale, appeared by his attorney, Maurice T. Johnson. The Defendants appeared in person and by their attorney, Warren A. Taylor. The Plaintiffs and the Defendants introduced testimony and the Court

having considered the proofs and evidence in said cause, and having heard the arguments of counsel and having taken the matter under advisement, and after consideration thereof, having made and ordered filed herein Findings of Fact and Conclusions of Law; and the Court being fully advised in the premises;

It Is Hereby Ordered, Adjudged and Decreed that the Plaintiffs, as Co-Trustees of the Nordale Estate Trust, are declared the owners in trust of the legal title and entitled to possession of all of Lot 6, in Block 4, in the Townsite of Fairbanks, Alaska, Fairbanks Recording District, Fourth Judicial Division, Territory of Alaska, which, including the accretions thereto, is more particularly described as follows, to wit:

Beginning at Corner #1 which is also the southeast corner of Lot 6, Block 4, as shown on the official map of the Fairbanks Townsite; Thence N. $11^{\circ}16'$ W. 308.0 feet to the present left bank of the Chena River, Corner #2; thence downstream along the left bank of the Chena River to Corner #3; thence S $11^{\circ}37'$ E 209.19 feet to Corner #4 which is also the Southwest corner of Lot 6, Block 4; thence N. $79^{\circ}10'$ E 106.0 feet to the point of beginning.

It Is Further Ordered, Adjudged and Decreed that the Plaintiffs have and recover forthwith, of and from the Defendants, and each of them, the possession of a portion of said Lot 6 in Block 4 of the Townsite of Fairbanks, Alaska, now held by

said Defendants, which portion is described as follows, to-wit:

Beginning at Corner Number 1, which is a point 125 feet North $11^{\circ}16'$ West of the Southeast Corner of Lot 6, Block 4 of the Townsite of Fairbanks, Alaska; thence South $78^{\circ}44'$ West, 109.26 feet to Corner Number 2; thence North $11^{\circ}37'$ West, approximately 105 feet to the present south bank of the Chena River, which point is Corner Number 3; thence upstream along the present south bank of the Chena River to Corner Number 4, which is a point at the intersection of the present south bank of the Chena River and the East side of Lot Six (6), Block 4 extended northward; thence South $11^{\circ}16'$ East to Corner 1 and the point of beginning.

It Is Further Ordered, Adjudged and Decreed that the Plaintiffs have and recover damages of and from the Defendants in the sum of \$25.00 per month from the 13th day of March, 1948, which damages to date amount to the sum of \$375.00.

It Is Further Ordered, Adjudged and Decreed that the Plaintiffs have and recover of and from the Defendants above named the sum of \$400.00 as and for the Plaintiffs' reasonable attorney's fee and Plaintiffs' costs and disbursements herein to be taxed by the Clerk of this Court in the sum of \$400.00.

Let Execution issue therefor.

Done at Fairbanks, Alaska, this 25th day of June,
1949.

/s/ HARRY E. PRATT,
District Judge.

Receipt of copy acknowledged.

[Lodged]: June 17, 1949.

[Endorsed]: Filed and Entered June 25, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE NINTH CIR-
CUIT COURT OF THE UNITED STATES
OF AMERICA

Notice Is Hereby Given that A. E. Waxberg and Wm. A. Birklid, the Defendants above-named, hereby appeal to the Ninth Circuit Court of Appeals of the United States of America from the Order Overruling defendants' Motion for New Trial entered in this action on the 25th day of June, 1949, and from the final judgment entered in the above-entitled action on the 25th day of June, 1949.

Dated at Fairbanks, Alaska, this 29th day of June, 1949.

/s/ WARREN A. TAYLOR,
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed June 29, 1949.

[Title of District Court and Cause.]

MOTION FOR AN ORDER EXTENDING TIME
TO FILE, RECORD AND DOCKET CAUSE

Comes now, Warren A. Taylor, the attorney for the above named appellants and moves this Honorable Court for an order extending the time for the appellants to file, record and docket this cause in appeal to the 1st day of October, 1949, upon the grounds that, due to a heavy Court docket the Court reporter, who is also the secretary for the District Judge, will be unable to transcribe her notes in time to docket the said appeal within the time prescribed by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit; and for the further reason that said Judge of the District Court for the Territory of Alaska, Fourth Division, is taking a vacation and will not be in Fairbanks until the 7th day of September, 1949, to sign the necessary order allowing appeal and citation upon appeal.

Dated at Fairbanks, Alaska, this 20th day of July, 1949.

/s/ WARREN A. TAYLOR,
Attorney for Appellants.

[Endorsed]: Filed July 20, 1949.

[Title of District Court and Cause.]

**ORDER EXTENDING TIME TO FILE,
RECORD AND DOCKET CAUSE**

This matter coming on for hearing upon the Motion of Warren A. Taylor, attorney for the above named appellants, for an order extending the time in which to file, record and docket the appeal in the above entitled case, and good cause appearing therefrom;

Now, Therefore, It Is Hereby Ordered that the said time for filing, recording and docketing the said appeal in the U. S. Circuit Court of Appeals for the Ninth Circuit, be and is hereby extended to the 1st day of October, 1949.

Dated and Done at Fairbanks, Alaska, this 20th day of July, 1949.

/s/ **HARRY E. PRATT,**
District Judge.

[Endorsed]: Filed and Entered July 20, 1949.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby stipulated and agreed between the parties hereto that in lieu of plaintiff's Exhibit F in the above entitled cause, which is the Official Plat of the Town of Fairbanks, the photostatic copy

attached hereto of that portion of said plat showing the land in controversy shall stand in place of and be sufficient for all purposes on appeal.

/s/ MAURICE T. JOHNSON,

Attorney for Plaintiff.

/s/ WARREN A. TAYLOR,

Attorney for Defendants.

[Endorsed]: Filed Sept. 10, 1949.

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[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: The Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the notice of appeal heretofore filed by the defendants in the above cause, the entire transcript of record in the above cause, prepared and transmitted as required by law and by rules of said Court.

/s/ WARREN A. TAYLOR,

Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 10, 1949.

In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 5824

ALFHELD HJALMAR NORDALE and AR-
NOLD MAURITZ NORDALE, co-trustees of
the Nordale Estate Trust,

Plaintiffs,

vs.

A. E. WAXBERG and WM. A. BIRKLID,
Defendants.

TRANSCRIPT OF TRIAL

Maurice T. Johnson, of Fairbanks, Alaska, Attorney
for Plaintiffs.

Warren A. Taylor, of Fairbanks, Alaska, and
Bailey E. Bell, of Anchorage, Alaska, Attorneys
for Defendants.

Be It Remembered, that upon the 9th day of May, 1949, at 10:00 o'clock a.m., the above-entitled cause came on regularly for trial before the Court; the Honorable Harry E. Pratt, District Judge, presiding;

That the Plaintiff Alfheld Hjalmar Nordale was present and represented by his attorney of record; that the Defendants were present in person and represented by their attorneys of record;

And Thereupon, the following proceedings were had:

The Court: This is the time set for trial in the

case of Nordale against Waxberg, et al. Parties ready? [1*]

Mr. Johnson: The Plaintiffs are ready, your Honor.

Mr. Taylor: The Defendants are ready.

The Court: Very well, proceed.

A. H. NORDALE

whereupon, Alpheld Hjalmar Nordale was duly sworn as a witness on his own behalf.

Mr. Taylor: If the Court please, I would like to have Mr. Bell entered as associate counsel in the case.

The Court: Bailey Bell?

Mr. Taylor: Yes, sir.

The Court: Very well, he may be so entered.

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. A. H. Nordale.

Q. Are you Alpheld Hjalmar Nordale, one of the Plaintiffs in this case? A. I am.

Q. Are you related to Arnold Mauritz Nordale, the other Plaintiff? A. Yes.

Q. And where do you reside, Mr. Nordale?

A. Fairbanks, Alaska.

Q. How long have you lived in Fairbanks?

A. Forty-five years. Forty-four years. [2]

* Page numbering appearing at foot of page of original Reporter's Transcript.

(Testimony of A. H. Nordale.)

Q. When you first came to Fairbanks, with whom did you come?

A. My father and mother.

Q. And your brother, Arnold? A. Yes.

Q. And you moved to Fairbanks from where?

A. Dawson, Yukon Territory.

Q. What year was that? A. 1904.

Q. And you have lived in Fairbanks ever since that time, have you?

A. With occasional short intermissions. I have been in the service, or out on the creeks.

Q. In other words, you have resided in Alaska—you have been a resident of Alaska ever since that time? A. Yes.

Q. Are you acquainted with the property in question in this suit known as Lot 6 in Block 4 of the Townsite of Fairbanks? A. I am.

Q. Where is that lot located, generally?

A. It is located on the intersection of First and Lacey on the north side of First Street.

Q. And on the west side of Lacey?

A. On the west side of Lacey.

Q. It would then be the northwest corner of First and Lacey, is that right? [3]

A. Would it be?

Q. Well, it is on the north side of First, and the west side of Lacey, it would be the northwest corner of that intersection, is that right?

A. That is correct.

Q. When, if ever, did your father acquire any interest in that lot? A. 1921.

(Testimony of A. H. Nordale.)

Q. And how much of an interest did he acquire at that time?

Mr. Taylor: If the Court please, I object on the grounds it is calling for a conclusion. The deed would be the best evidence.

Mr. Johnson: This is just preliminary, your Honor, leading up to the introduction of the deeds.

The Court: All right. I will overrule the objection. (Pause) I will sustain the objection.

Q. You say about 1921? A. 1921.

Q. And who, if anyone, owned an interest in the lot? A. Peter Vachon.

Q. Did Peter Vachon and your father, subsequent to 1921, acquire or receive a trustee's deed from the Townsite Trustee of Fairbanks?

A. In 1922, I believe.

Mr. Johnson: Would you mark these? [4]

Clerk of Court: Plaintiffs' Identification Number "1." Plaintiffs' Identification Number "2." Plaintiffs' Identification Number "3." Plaintiffs' Identification Number "4."

(Plaintiffs' Identification Numbers "1," "2," "3" and "4" marked.)

Mr. Johnson: At this time, your Honor, I would like to offer in evidence Plaintiffs' Identification Number "4," which is a certified copy of the Trustee's Deed from George A. Parks, Townsite Trustee, to Peter Vachon and A. H. Nordale, covering Lot 6 in Block 4 of the Townsite of Fairbanks.

Mr. Taylor: No objections, your Honor.

(Testimony of A. H. Nordale.)

The Court: Very well, it may be admitted.

Clerk of Court: Plaintiffs' Exhibit "A."

(Plaintiffs' Identification "4" admitted in evidence as Plaintiffs' Exhibit "A.")

PLAINTIFFS EXHIBIT A

United States of America,

Territory of Alaska, Fourth Judicial Division—ss.

I, the undersigned, United States Commissioner for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, do hereby Certify that the hereto attached is a full, true and correct copy of the Trustee's Deed, Geo. A. Parks, Grantor, and Peter Vachon and A. J. Nordale, Grantees, filed for record April 14, 1922, in Book 22, Page 175, Instrument Number 55,954 on file and record in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal at Fairbanks, Alaska, this 2nd day of May, 1949.

[Seal] /s/ CLINTON B. STEWART,
United States Commissioner and Recorder, Fair-
banks Precinct.

[Seal] By /s/ MARIE D. GORMAN,
Deputy Recorder and Clerk
of the Probate Court.

55954

Trustee's Deed

This Indenture, made this first day of March, in the year of our Lord one thousand nine hundred and twenty-two, by and between Geo. A. Parks, as

(Testimony of A. H. Nordale.)

trustee for the townsite of Fairbanks, in the Territory of Alaska, party of the first part, and Peter Vachon and A. J. Nordale of Fairbanks, Alaska, parties of the second part, Witnesseth, That said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of section 11 of the act of Congress approved March 3, 1891 (26 U. S. Stat., 1095), and the regulations thereunder and the patent issued to him thereon, and in consideration of the sum of Fifty-four and 24/100 (\$54.24) dollars, the amount of the assessments upon the premises hereinafter described, the receipt of which is hereby acknowledged, by these presents does grant, convey, and confirm unto the said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situate in the townsite of Fairbanks and Territory of Alaska, described as follows, to wit: Lot 6 in Block 4, according to the official plat of survey of said townsite. Subject to rights and reservations in said patent expressed. To Have and To Hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, forever.

In Witness Whereof said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

[Seal] GEO. A. PARKS,
Trustee for the townsite of Fairbanks, Territory
of Alaska.

(Testimony of A. H. Nordale.)

In presence of:

GILBERT A. TUBEN,
JNO. P. WAINE.

Territory of Alaska:

Be It Remembered, That on this ninth day of March, A.D. 1922, before me, a Notary Public, came Geo. A. Parks, to me personally known to be the trustee of said townsite of Fairbanks, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledged the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal] WALTER B. HEISEL,
Notary Public for Alaska.

My commission expires March 1, 1926.

Filed for record April 14th, 1922 at 45 min. past 10 A.M. M. R. Boyd, Recorder.

[Endorsed]: Filed Oct. 3, 1949, U.S.C.A.

The Court: I will see it, Mr. Johnson.

(Whereupon, Mr. Johnson handed the Exhibit to the Court.)

Clerk of Court: Plaintiffs' Identification Number "5."

(Testimony of A. H. Nordale.)

(Plaintiffs' Identification Number "5" marked.)

The Court: This Deed is Lot 6 in Block 4, according to the official Plat and Survey. Do you intend to introduce the official Plat and Survey? [5]

Mr. Johnson: Yes, your Honor. The City Engineer will be here with that.

The Court: Very well. I don't believe you had a chance to mark this yet, Mr. Clerk.

(Whereupon, the Exhibit was handed to the Clerk of the Court to be marked.)

Q. After 1922, did your father acquire the interest of Peter Vachon in this Lot 6 of Block 4?

A. He did.

Mr. Johnson: If the Court please, at this time we would like to offer in evidence Plaintiffs' Identification "5," which is a certified copy of a deed to Lot 6 in Block 4, the property in question, running from Peter Vachon to A. H. Nordale.

Mr. Taylor: If the Court please, I am going to object to the introduction of this at the present time, until such time as the official Plat of the Town is introduced in evidence, so we can compare this with the official Plat. I believe the metes and bounds are considerably different than the Plat of the Town.

The Court: Let me see that.

Mr. Johnson: The metes and bounds have been increased over the years. I think that will be con-

(Testimony of A. H. Nordale.)

nected up with the evidence. That calls for Lot 6, Block 4 of the Townsite of Fairbanks, according to the official Plat. [6]

The Court: And you wish to have the Plat introduced before the Deed? Is that your—— (interrupted)

Mr. Taylor: Well, I would, unless counsel stipulates that applies to Lot 6 of Block 4 of the official Plat, if that is all that was introduced for.

The Court: If he stipulates that this deed refers to Lot 6 of Block 4?

Mr. Taylor: Of the official Plat, your Honor.

The Court: As shown on the official Plat? Do you wish to do that?

Mr. Johnson: Well, no. Lot 6, Block 4 of the official Plat has been increasing over a period of years. That is the contention. Defendants have not denied any of the allegations we have made, except the matter of the accretions, and it is our contention—I think we will—— (interrupted)

The Court: All right, objection overruled. It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "B."

(Plaintiffs' Identification "5" admitted in evidence as Plaintiffs' Exhibit "B.")

PLAINTIFFS' EXHIBIT B

United States of America,
Territory of Alaska, Fourth Judicial Division—ss.
I, the undersigned, United States Commissioner

(Testimony of A. H. Nordale.)

for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, do hereby Certify that the hereto attached is a full, true and correct copy of the Deed by and between Peter Vachon, party of the first part, and A. J. Nordale, party of the second part, as recorded November 25, 1930 in Volume 25 of Deeds page 357, on file and record in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal at Fairbanks, Alaska, this 27th day of April, 1948.

[Seal] /s/ EVERETT E. SMITH,
United States Commissioner and Recorder, Fair-
banks Precinct.

By /s/ MARIE D. GORMAN,
Deputy Recorder.

69235

This Indenture, Made and executed on this, the 14th day of July, A.D. 1928, By and Between Peter Vachon, of Fairbanks, Territory of Alaska, Terri-
tory of Alaska, party of the first part, and A. J. Nordale, of the same place, party of the second
part, Witnesseth:

That the party of the first part, for and in con-
sideration of the sum of One dollar(s), and other
good and valuable considerations, to him in hand
paid by the party of the second part, receipt
whereof is hereby acknowledged, has granted, bar-
gained, and sold, and by these presents does grant,

(Testimony of A. H. Nordale.)

bargain, sell, quitclaim, and convey, unto the party of the second part, all the following described real estate, situate, lying, and being in the Fairbanks Mining and Recording Precinct, Territory of Alaska, to-wit: An undivided one-half interest in and to:

All that certain real property situate in the Town of Fairbanks, Territory of Alaska, described as commencing at the northwest corner of Lacy Street and First Avenue in said town, running thence westerly along the north line of said First Avenue a distance of one hundred and six feet, more or less, to a post; thence northerly to the Chena River; thence easterly along the bank of said river a distance of one hundred and six feet, more or less; thence southerly on a line with the westerly line of Lacy Street a distance of ninety feet, more or less, to the place of beginning; being what is commonly known as the Carroll & Parker lot; which said lot is now known on the official map and survey of said town of Fairbanks, as Lot Number -6- in Block Number -4-; together with all and singular the buildings, structures, and improvements situate thereon, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof;

To Have And To Hold unto the said party of the second part in and to his heirs, executors, administrators, successors in interest, and assigns forever.

In Witness Whereof, the party of the first part

(Testimony of A. H. Nordale.)

has hereto set his hand and seal on the day and year hereinabove first written.

In the presence of:

R. H. GEOGHEGAN,

JOHN A. CLARK.

[Seal] PETER VACHON.

United States of America,
Territory of Alaska—ss.

This Is To Certify that, on this, the 14th day of July A.D. One Thousand Nine Hundred Twenty Eight, before me, the undersigned, a Notary Public in and for the Territory of Alaska, residing therein, duly commissioned and sworn, personally appeared Peter Vachon by me known to be the individual mentioned in and who executed the within and foregoing instrument, and he acknowledged to me that he signed and sealed it as his free and voluntary act and deed for the uses and purposes therein specified.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year above in this certificate first written.

[Seal] JOHN A. CLARK,
Notary Public in and for the Territory of Alaska.

My commission expires 24 April 1930.

Filed for record: Nov. 25, 1930, at 41 min. past
2 P.M. M. R. Boyd, Recorder.

(Testimony of A. H. Nordale.)

Mr. Taylor: May I have one more look at that?

Mr. Johnson: Yes. Just a minute.

. (Mr. Johnson gave the Exhibit to the Clerk of Court to be marked.)

Q. Subsequent to the time that your father acquired the interest of Peter Vachon, did he pass away? [7] A. Yes, he did.

Q. And what, if any, disposition was made of his property? Did he leave a will?

A. He willed his property to my mother.

Q. Was she the sole heir? A. She was.

Q. And was the property distributed to her as the sole heir and legatee? A. It was.

Clerk of Court: Plaintiffs' Identification Number "6."

(Plaintiffs' Identification Number "6" marked.)

Mr. Johnson: If the Court please—oh, incidentally, I would like to consider the Plaintiffs' Exhibits "A" and "B" as having been read, your Honor.

The Court: Very well.

Mr. Johnson: If counsel has no objection. I would like, at this time, to offer Plaintiffs' Identification "6," which is a certified copy of the Order Settling the Final Account and for Distribution in the Matter of the Estate of A. H. Nordale, deceased, Probate 446, Vol. 15, page 292 of the Probate Docket.

(Testimony of A. H. Nordale.)

Mr. Taylor: No objection, your Honor.

The Court: It may be admitted. [8]

Clerk of Court: Plaintiffs' Exhibit "C".

(Plaintiffs' Identification "6" admitted in evidence as Plaintiffs' Exhibit "C".)

PLAINTIFFS' EXHIBIT C

United States of America,
Territory of Alaska,
Fourth Judicial Division—ss.

I, the undersigned, United States Commissioner for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, do hereby Certify that the hereto attached is a full, true and correct copy of the Order Settling Final Account and for Distribution, In the Matter of the Estate of A. J. Nordale, Deceased. Probate No. 446, entered in Vol. 15, Page 292 of the Probate Docket, on file and record in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal at Fairbanks, Alaska, this 2nd day of May, 1949.

[Seal] CLINTON B. STEWART,
United States Commissioner and Recorder, Fair-
banks Precinct.

[Seal] By /s/ MARIE D. GORMAN,
Deputy Recorder and Clerk of the Probate Court.

(Testimony of A. H. Nordale.)

In the Probate Court for the Territory of Alaska,
Fairbanks Precinct

No. 446

In the Matter of

The Estate of A. J. NORDALE, Deceased.

**ORDER SETTLING FINAL ACCOUNT AND
FOR DISTRIBUTION**

Comes now Anna Mathilda Nordale, the executrix of said estate, by G. A. O. Bondy, her attorney, and proves to the satisfaction of this court that her final account and petition for distribution herein was rendered and filed on the 26th day of November, 1941; that on the same day the Court appointed the 30th day of January, 1942, for the settlement and hearing thereof; that due and legal notice of the time and place of said settlement and hearing has been given as required by law; and the said account and petition being now presented to the court and no person appearing to except or contest the same, the court, after hearing the evidence, and being satisfied that there are no taxes due and payable upon the property of said estate, settles said account and order distribution of said estate as follows:

It is ordered, adjudged, and decreed by the court, That said executrix has in her possession, belonging to said estate a balance of \$7,282.39 consisting of the property hereinafter described, and mentioned in the inventory filed herein; that said account be al-

(Testimony of A. H. Nordale.)

lowed and settled accordingly; and that in pursuance of and according to the provision of the last will and testament of said deceased, the property of said estate distributed and awarded to Anna Mathilda Nordale, the sole beneficiary under said will, and is described as follows, to wit:

Lots 4 & 6 in Block 4, in the Town of Fairbanks, Alaska, together with all improvements and buildings thereon.

Lots 1, 2, 3, & 5 of Block 69, in the Town of Fairbanks, Alaska, together with all buildings and improvements thereon.

Lot 7 of Block 78, in the Town of Fairbanks, Alaska.

The Hope, Fairbanks, Keystone, Kawllite and Wolf lode mining claims at head of Wolf Creek in the Fairbanks Mining and Recording Precinct, Alaska.

And

The amount of \$1,128.78 accrued wages, due estate from Nordale Hotel Corporation.

Promissory Note executed April 6, 1925, by David Strandberg to A. J. Nordale, for the amount of \$50.00.

10 shares of the common stock of Merchant Calculating Machine Company as evidenced by Certificate No. 5735.

1 Share of the common capital stock of Fairbanks Airplane Company, as evidenced by Stock certificate No. 43.

(Testimony of A. H. Nordale.)

1244 shares of the Common capital stock of the Nordale Hotel Corporation, as per Stock Certificate No. VI.

Two (2) shares of the common stock of Tanana Valley Fair Association.

Twenty (20) shares of the common stock of Tanana Valley Agricultural Association.

All furniture and fixtures contained and being in the home or residence of said executrix on Lots 1, 2 & 3 in Block 69, in Town of Fairbanks, Alaska, aforesaid.

Dated at Fairbanks, Alaska, this 3rd day of March, 1942.

[Probate Seal.]

/s/ WILLIAM N. GROWDEN,
Probate Judge.

Filed: March 3, 1942, William N. Growden, U.S. Commissioner & Ex Officio Probate Judge.

The Court: I will take it, Mr. Johnson.

Q. Subsequent to your father's death, did your mother establish a trust covering the property in question and other property, which trust is known as the Nordale Estate Trust? A. She did.

Q. Was there a written declaration of trust executed at that time? A. There was.

Clerk of Court: Plaintiffs' Identification "7".

Q. I will show you Plaintiffs' Identification

(Testimony of A. H. Nordale.)

Number "7", and will ask you to tell the Court what that is, if you know?

A. That is the Declaration of Trust given by my mother.

Q. Does that bear your signature?

A. It does.

Q. The signature of your brother as trustee?

A. That is right.

Q. Is that the original document?

A. That is the original.

Q. Has that document been filed of record?

A. It has.

Q. In the Recorder's Office?

A. It has. [9]

Mr. Johnson: If the Court please, we now offer in evidence Plaintiffs' Identification "7".

Clerk of Court: Plaintiffs' Identification Number "8".

(Plaintiffs' Identification Number "8", marked.)

Mr. Taylor: No objection, your Honor.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "D".

(Plaintiffs' Identification "7" admitted in evidence as Plaintiffs' Exhibit "D".)

PLAINTIFFS' EXHIBIT D

Declaration of Trust

Know All Men By These Presents: That we, Alpheld Hjalmar Nordale, of Fairbanks, Alaska, and

(Testimony of A. H. Nordale.)

Arnold Mauritz Nordale, of Dawson, Yukon Territory, do hereby admit, certify, and declare that upon this date there has been transferred, assigned, and conveyed to us, as grantees and Trustees, by Anna Mathilda Nordale, of Fairbanks, Alaska, as grantor and Trustor, the following described real and personal property, situate in the Fairbanks Mining and Recording District, Fourth Division, Territory of Alaska, to wit:

1244 shares of the common capital stock of the Nordale Hotel Corporation;

Lots Four (4) and Six (6) in Block Four (4); and Lots One (1), Two (2), Three (3), and Five (5) in Block Sixty-nine (69); and Lot Seven (7) in Block Seventy-eight (78) of the town of Fairbanks, Alaska, according to the map and plat thereof on file in the office of the City Clerk of said town of Fairbanks, Alaska, and known as the "L. S. Robe Plat"; and

The following described patented quartz mining claims, to wit:

Hope Lode Claim

Fairbanks Claim

Keystone Claim

Kawilita Claim

a more particular description of which is set forth in the patent granted by the United States to A. J. Nordale, which said patent is recorded in Volume 19 of Deeds, at page 591 thereof, of the records of said Fairbanks Recording District; and also

That certain unpatented quartz mining claim

(Testimony of A. H. Nordale.)

known as the Wolf Lode Claim, which said claim is bounded on the south by said Keystone Claim and on the east by said Fairbanks Claim.

The conveyance and transfer of said property has been accepted by us as trustees, and we hereby declare and agree that we will hold said property, and all other funds and property at any time transferred to and received by us, in trust hereunder for the following named persons and upon the following terms and conditions, to wit:

(1) In Trust, during the life of Anna Mathilda Nordale, herein known as the Trustor, for her sole and exclusive use and benefit, and it is an express condition and provision of this trust, that, during the life of said Trustor, she shall have the right and shall be allowed to continue in the full, free, and undisturbed possession of the trust estate—save and except said stock of the Nordale Hotel Corporation and of the mining claims hereinabove described—without any rental or accounting for the rents or issues derived therefrom to said Trustees, or to any of the beneficiaries under this trust.

(2) In Trust—upon the death of said Trustor—and for the sole use and benefit of the following named persons, to wit:

Alpheld Hjalmar Nordale, of Fairbanks, Alaska;

Arnold Mauritz Nordale, of Dawson, Yukon Territory,

Anita Mildred Cox, of Tiburon, California,

Katherine Driscoll Nordale, of Fairbanks, Alaska,

(Testimony of A. H. Nordale.)

Adler Jennings Nordale, of Fairbanks, Alaska, and

Alice Dolores Couey, of Fairbanks, Alaska, said above named persons being trust beneficiaries only, and their respective beneficial interest in said trust estate is as follows:

Alfheld Hjalmar Nordale, an undivided 5/15 interest,

Arnold Mauritz Nordale, an undivided 2/15 interest.

Anita Mildred Cox, an undivided 2/15 interest,

Katherine Driscoll Nordale, an undivided 2/15 interest,

Adler Jennings Nordale, an undivided 2/15 interest, and

Alice Dolores Couey, an undivided 2/15 interest.

(3) In Trust—save and except as provided in paragraph (1) hereof—to collect and receive all rents and incomes from said property, and semi-annually, or oftener, at their convenience, to distribute such portion thereof as they may, in their discretion, determine to be fairly distributable net income, to the Trustor or the said beneficiaries, as hereinabove provided, according to their respective interest; and, in this connection, the Trustees shall have full authority from time to time to use any funds on hand, whether received as capital or income, for the purposes of any repair, improvement, protection, or development of the properties held hereunder (save and except that the said Trustees herein shall not engage in or carry on, except as les-

(Testimony of A. H. Nordale.)

sors, any mining operations), or the acquisition of any property as to the Trustees may be determined to be wise and expedient, for the protection and development of the trust property as a whole, pending its conversion and distribution. The determination of the Trustees, made in good faith as to all questions as between "capital" and "income," shall be final.

(4) In Trust, pending final conversion and distribution of the property, to manage and control the same, the Trustees having for such purposes all and as full discretionary power and authority as they would have if they were themselves the sole and exclusive beneficial owners thereof, including the right to vote said stock of the Nordale Hotel Corporation as in their judgment may seem most advisable.

(5) In Trust, pending final conversion and distribution, by and with the consent, in writing, of a majority in interest of the beneficiaries, to sell, lease, bond, mortgage, and exchange any of the property belonging to the trust; and, in addition to the power and authority conferred upon the Trustees by paragraph (3) hereof, to repair, improve, protect, and develop the property of the trust out of funds in the hands of the Trustees, the Trustees may, by and with the consent in writing of a majority in interest of the beneficiaries, borrow money to make repairs, and improvements, and to develop and acquire other properties which they deem es-

(Testimony of A. H. Nordale.)

sential and beneficial to the trust; and for said purposes the Trustees may fix the time of any loan and may pledge and mortgage any of the properties of the trust as security therefor, as they deem advisable.

(6) The Trustees may employ all such agents and attorneys as they may think proper, and find expedient, and prescribe their powers and duties, and shall not be personally responsible for any misconduct, errors, or omissions of such agents or attorneys employed and retained, with reasonable care.

(7) The Trustees shall at all times keep full and proper books of account and records of their proceedings and business and shall, at least annually, render account of the trust to any beneficiary requesting the same, but no Trustee serving hereunder shall be obliged to give any bond, nor shall any Trustee have any liability, except for the result of his own gross negligence or bad faith.

(8) The Trustees shall be entitled to receive reasonable compensation for services, not exceeding one per cent. (1%) of the total gross annual income received by them as such Trustees; unless, hereafter, a majority in interest of the beneficiaries shall consent in writing to some larger compensation. The Trustees shall also be entitled to reimbursement and indemnification for all proper expenses, and shall be entitled at all times to the advice of counsel.

(9) Any Trustee hereunder may resign by a

(Testimony of A. H. Nordale.)

written instrument, duly acknowledged, and attached to the original of this instrument or recorded with the Recorder of the Fairbanks Recording District of Alaska. Any vacancy in the office of Trustee, however occasioned, shall be filled by the remaining Trustee by an instrument in writing, signed by him, and assented to in writing by the holders of a majority in interest of the beneficiaries. Such appointment to be in like manner attached to the original of this instrument or recorded in said Recording District, as in the case of the resignation last above provided for.

(10) In the event of the absence from the Territory of Alaska of either of the Trustees hereunder, or in the event that either of said Trustees is incapacitated, through illness or otherwise, from performing his duty as Trustee, then the other Trustee shall, at such time or times, have and may exercise any and all the powers given to the Trustees hereunder, with like effect as if similarly exercised by both of them.

(11) The terms and provisions of this trust may be modified at any time by instruments in writing signed and sealed and acknowledged by the then Trustees, and assented to in writing, by the holder or holders of the majority in interest of the beneficiaries, attached to the original of this instrument or recorded with the Recorder of said Fairbanks Recording District.

(12) The certificate in writing of the Trustees as to any resignation from the office of Trustee here-

(Testimony of A. H. Nordale.)

under and as to the appointment of any new Trustee hereunder, and as to the existence or non-existence of any modification hereof, may always be relied upon and shall always be conclusive evidence in favor of all persons dealing in good faith with said Trustees and relying upon such certificate.

(13) The title for this trust (fixed for convenience) shall be "Nordale Estate Trust," and the term "Trustees" in this instrument shall be deemed to include the original and all successive Trustees.

(14) The life of this trust shall continue for a period of twenty (20) years after the death of the Trustor, Anna Mathilda Nordale, but said Trustees, by and with the consent of a majority in interest of the beneficiaries, may convert said estate into money and distribute any proceeds thereof among the beneficiaries entitled thereto at any time within said period of twenty (20) years, until the estate herein or the property hereunder is fully converted and distributed to the beneficiaries; and the respective interests of the beneficiaries hereunder, for the purpose of transmission and otherwise, shall be deemed personal property.

At the end of twenty (20) years from and after the death of said Trustor (unless the estate shall sooner be converted and distributed and said trust lawfully terminated), all property of every kind then held hereunder shall be sold by the Trustees, and equitable distribution made by them of the net proceeds among the persons then entitled thereto,

(Testimony of A. H. Nordale.)

unless the majority in interest of the beneficiaries shall elect to extend the life of this trust beyond that period.

In Witness Whereof, the said Trustees have hereunto set their hands and seals in triplicate on this the 4th day of November, in the year one thousand nine hundred forty, A.D.

[Seal] /s/ ALFHELD HJALMAR
NORDALE,
Trustee.

[Seal] /s/ ARNOLD MAURITZ
NORDALE,
Trustee.

In the presence of:

/s/ J. L. BLOCKHUS.
/s/ DOROTHY RUSSELL.
/s/ A. F. DAILY.
/s/ M. E. A. SEALEY.

United States of America,
Territory of Alaska—ss.

This Is To Certify That on this, the 4th day of November, 1940, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Alpheld Hjalmar Nordale, personally known to me to be the identical individual named in and who executed the foregoing Declaration of Trust as Trustee thereunder, and he acknowledged to me that he did so freely and voluntarily, for the uses and purposes mentioned therein.

(Testimony of A. H. Nordale.)

Witness my hand and Notarial Seal the day and year in this certificate first above written.

[Seal] /s/ DOROTHY RUSSELL,
Notary Public in and for the Territory of Alaska.
My commission expires Nov. 16, 1942.

Mr. Johnson: I would like to have Plaintiffs' Exhibits "C" and "D" considered read.

The Court: Yes.

Q. Now, Mr. Nordale, in connection with the establishment of this Nordale Estate Trust, at the same time that the Declaration of Trust was executed, did your mother execute a Deed in Trust to you and your brother, covering this property, as well as other property? A. She did.

Q. I will show you a document marked for Identification as Plaintiffs' Identification "8". I will ask you to look at that and tell the Court what it is, if you know?

A. This is a Deed in Trust from my mother.

Q. Is that the original deed signed by your mother? [10]

A. That is.

Q. That is her signature? A. Yes.

(Testimony of A. H. Nordale.)

Q. Was it recorded in the Recorder's Office of the Fairbanks Precinct? A. It was.

Mr. Johnson: We will offer Plaintiffs' Identification "8".

Mr. Taylor: No objection.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "E".

(Plaintiffs' Identification "8" admitted in evidence as Plaintiffs' Exhibit "E".)

PLAINTIFFS' EXHIBIT E

Know All Men By These Presents: That I, Anna Mathilda Nordale, of Fairbanks, Alaska, as Grantor and first party, do hereby grant, bargain, sell, assign, transfer, and set over unto Alpheld Hjalmar Nordale, of Fairbanks, Alaska, and Arnold Mauritz Nordale, of Dawson, Yukon Territory, as Grantees and Trustees, and upon the terms and conditions set forth in a certain Declaration of Trust this day executed by said Trustees, reference to which is hereby made for further particulars, all of the following described property situated in the Fairbanks Mining and Recording District, Fourth Division, Territory of Alaska, and more particularly described as follows, to-wit:

1244 shares of the common capital stock of the Nordale Hotel Corporation;

Lots Four (4) and Six (6) in Block Four (4); and Lots One (1), Two (2), Three (3) and Five (5) in Block Sixty-nine (69); and Lot Seven (7) in

(Testimony of A. H. Nordale.)

Block Seventy-eight (78) of the town of Fairbanks, Alaska, according to the map and plat thereof on file in the office of the City Clerk of said town of Fairbanks, Alaska, and known as the "L. S. Robe Plat"; and all buildings and improvements located thereon; and

The following described patented quartz mining claims, to-wit: Hope Lode Claim, Fairbanks Claim, Keystone Claim, Kawilita Claim, a more particular description of which is set forth in the patent granted by the United States to A. J. Nordale, which said patent is recorded in Volume 19 of Deeds, at page 591 thereof, of the records of said Fairbanks Recording District; and also

That certain unpatented quartz mining claim known as the Wolf Lode Claim, which said claim is bounded on the south by said Keystone Claim and on the east by said Fairbanks Claim.

Together With, all and singular, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

To Have And To Hold the same unto the said Trustees, upon the terms and conditions set forth under said Declaration of Trust hereinabove referred to.

In Witness Whereof, I have hereunto set my hand and seal on this, the 4th day of November, in the year one thousand nine hundred forty, A.D.

[Seal] /s/ ANNA MATHILDA NORDALE.

(Testimony of A. H. Nordale.)

In the presence of:

/s/ JOHN L. McGUIN.

/s/ DOROTHY RUSSELL.

United States of America,

Territory of Alaska—ss.

This Is To Certify That on this, the 4th day of November, 1940, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Anna Mathilda Nordale, known to me to be the identical individual named in and who executed the foregoing instrument, and she acknowledged to me that she did so freely and voluntarily, for the uses and purposes mentioned therein.

Witness my hand and Notarial Seal the day and year in this certificate first above written.

[Seal] /s/ DOROTHY RUSSELL,

Notary Public in and for the
Territory of Alaska.

My commission expires Nov. 16, 1942.

Mr. Johnson: If the Court please, we would like to consider read Plaintiffs' Exhibit "E".

The Court: Yes.

Q. Mr. Nordale, will you describe what type of building, if any, is on the property known as Lot 6 in Block 4?

A. A frame and iron building.

(Testimony of A. H. Nordale.)

Q. How large a building would you say that was, or do you know?

A. I do not know definitely. It is probably 50 feet wide and approximately 85 or 90 feet long.

Q. How long has that building been on the premises, if you know? [11]

A. Since—one-half of it since 1905 or '06.

Q. And which half do you mean?

A. That would be the Easterly half. It was added to approximately a year later; the Westerly portion was put on.

Q. Then the building was always 85 or 90 feet long, as you originally knew it?

A. That is correct.

Q. But it was widened afterwards?

A. It was widened somewhat.

Q. What was on that property prior to the time the building was put on, if you know?

A. A saw mill.

Q. Do you know who had the saw mill there?

A. Parker and Carroll.

Q. Do you know when they put it on?

A. Sometime during the summer of 1903.

Q. And do you know how long that saw mill was there? A. Approximately two years.

Q. Now, you have, as you say, lived in Fairbanks and vicinity for many, many years. Have you had occasion to observe the action of the Chena River just back of this property?

A. I have, very closely.

(Testimony of A. H. Nordale.)

Q. When you first came to Fairbanks in 1904 or '05, can you describe how the channel of the river was, behind this property at that time? [12]

A. I came to Fairbanks in October of 1904, and at that time the mill was in operation—— (interrupted).

Mr. Taylor: Just a moment, I am going to object to the question and answer on the grounds the title of this was derived in 1922. I think any action of the Chena River would necessarily have to be from the time it was bought from the predecessors in interest of the Plaintiff.

Mr. Johnson: Well, if the Court please, the title was derived from the Federal Government, and it began building up prior to that time. I think we have the right to show what the action of—— (interrupted).

The Court: Objection overruled.

Q. Go ahead, Mr. Nordale, will you explain how the Chena River channel was running just behind this property at the time you first came here?

The Court: Just a moment, can't you make it more specific by introducing the map and telling the situation with reference to the lines that were shown by the map, so we would have something more definite?

Mr. Johnson: Yes, your Honor.

Q. Mr. Nordale, I will show you Plaintiff's Identification "3" and I will ask you if you can tell what that is?

(Testimony of A. H. Nordale.)

A. That is a map of the property in question.

Q. By whom was it prepared?

A. By the Alaska Architectural and Engineering Company. [13]

Q. At whose request? A. At my request.

Q. And what does that plat purport to show at the present time?

A. It shows the boundaries of the lot—Lot 6 in Block 4; the original meander line, and the present bank of the Chena River.

Q. Does it show the location of the building that you have described? A. It does.

Q. How is that shown on that plat?

A. By broken lines.

Q. Does it show the portion of the property which has been taken possession of by the Defendants? A. It does.

Q. How is that shown?

A. By broken lines.

Q. Well, are they the same as the other, or are they?

A. It is shown in the same manner, and it is described as the "Birklid and Waxberg Building".

Q. That is shown on that plat? A. Yes.

Q. Are the distances given on that plat?

A. They are.

Q. Are the distances, as shown by the original—from the original meander line and also to the present meander line [14] of the river—are those distances given?

(Testimony of A. H. Nordale.)

A. They are. They are given.

Q. There is a line marked in pencil "A" and "B". Can you tell what that is? There is a line here marked "A" and "B"—

(Interrupted.)

Mr. Taylor: Just a moment, I believe this has gone far enough. I make an objection upon the grounds that the man who made the copy of the map will be the best witness, your Honor.

Mr. Johnson: He will be here, your Honor, but I thought I would identify it as far as I could with Mr. Nordale.

The Court: Don't you require the original map, itself? That will be hearsay.

Mr. Johnson: The original map will also be here, your Honor. I have the Engineer coming over with that. That is the original Townsite map.

The Court: That is—

Mr. Johnson: We have a copy made from the original survey. The tracing will be identified by the Engineer as being made from the original survey notes.

The Court: I think I will require you to proceed in the exact order that is required by law. First, show your map; your official map.

Mr. Johnson: Very well. May I have leave to excuse Mr. Nordale for the moment and call the City Engineer? [15]

The Court: Yes. Step down, Mr. Nordale.

(Whereupon, Mr. Nordale was temporarily

excused as a witness and left the witness stand.)

Mr. Johnson: With the permission to recall Mr. Nordale when—(interrupted)

The Court: Yes.

JAMES R. WILCOX

was called as a witness on behalf of the Plaintiffs, and was duly sworn and testified as follows:

Direct Examination

By Mr. Johnson:

Q. State your name, please.

A. James R. Wilcox.

Q. Where do you reside, Mr. Wilcox?

A. Fairbanks.

Q. What, if any, official position do you hold in the Town of Fairbanks?

A. I am the City Engineer.

Q. As City Engineer, do you have in your custody the original survey notes of the Townsite of Fairbanks? A. I have a copy of them.

Q. And do you have the official map of the Townsite of Fairbanks, as based on the survey?

A. Yes. [16]

Q. Have you made a copy of that map at my direction? A. Yes, I have.

Clerk of Court: Plaintiffs' Identification Number "9".

(Plaintiffs' Identification Number "9", marked.)

(Testimony of James R. Wilcox.)

Q. I will show you Plaintiffs' Identification Number "9", and ask you what that is—what that purports to be?

A. This is a print of the original plat of the Townsite.

Q. Was that made up from the original tracing?

A. It is made up from a copy of the original tracing; a photo copy is what it is.

Q. And do you know whether or not this Identification Number "9" is true and correct?

A. Yes, it is.

Q. It is a true and correct representation of the original Townsite survey of the Town of Fairbanks, is that correct? A. That is right.

Q. It shows all of the meander lines and boundaries?

A. Yes. That is all the information that was taken from the survey notes—the original survey notes.

Mr. Johnson: We would like to offer this in evidence.

Mr. Taylor: We object, your Honor, upon the grounds proper foundation hasn't been laid. No reason shown for the original not being introduced.

The Court: Objection sustained.

Q. Do you know where the original tracing or plat is, of this?

A. It is in Washington, D. C., in the Surveyor General's Office.

(Testimony of James R. Wilcox.)

The Court: I happen to know there is an original on file in the Recorder's Office.

A. It is a print, isn't it?

The Court: Original.

A. Original tracing?

Mr. Johnson: If the Court please, may we have a few minutes recess while I get the Commissioner up?

The Court: Yes. The Court will be recessed for ten minutes.

(Whereupon, Court was recessed for ten minutes.)

Mr. Johnson: If the Court please, may I have leave to call the United States Commissioner and Recorder for a few minutes, in place of Mr. Wilcox?

The Court: Yes.

CLINTON B. STEWART

called as a witness on behalf of the Plaintiffs, was duly sworn and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please? [18]

A. Clinton B. Stewart.

Q. And where do you live, Mr. Stewart?

A. Fairbanks, Alaska.

Q. What, if any, official position do you hold in the Fairbanks Precinct?

A. United States Commissioner for the Fair-

(Testimony of Clinton B. Stewart.)

banks Precinct and Recorder for the Fairbanks Recording District.

Q. As such, do you have in your possession, as the Recorder of the Fairbanks Recording District, do you have in your possession an official plat of the Town of Fairbanks? A. Yes.

Q. Do you have that plat with you?

A. Yes.

Clerk of Court: Plaintiffs' Identification Number "10".

Q. I will show you Plaintiffs' Identification Number "10", and ask you if that is the official plat of the Townsite of Fairbanks that appears in your records? A. Yes.

Q. And this Identification has the original recording stamp on it, does it? A. Yes.

Q. And this has been in the custody of your office since it was recorded, has it? A. Yes.

Q. So far as you know it is in the same condition now as it was when it was first recorded?

A. Yes.

Mr. Johnson: We will offer this in evidence, if the Court please.

Mr. Taylor: No objection.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "F".

(Plaintiffs' Identification "10" admitted in evidence as Plaintiffs' Exhibit "F".)

Mr. Johnson: Do you care to see it?

The Court: I have seen it.

(Testimony of Clinton B. Stewart.)

Mr. Johnson: Will the Court consider the Exhibit read?

The Court: Yes, indeed.

Mr. Johnson: You may cross-examine.

Mr. Taylor: No cross-examination.

Mr. Johnson: That is all.

(Whereupon, Mr. Clinton B. Stewart was excused as a witness and left the courtroom.)

Mr. Johnson: Now, I would like to recall Mr. Wilcox, if the Court please.

The Court: Very well.

JAMES WILCOX

having previously been duly sworn, resumed the stand for further Direct Examination. [20]

Direct Examination (Continued)

By Mr. Johnson:

Q. You are James Wilcox, who previously had been sworn and testified in this case? A. Yes.

Q. Now, Mr. Wilcox, I will show you Plaintiffs' Exhibit "F", and will ask you if you recognize that as being an original map of the Townsite of Fairbanks?

A. This is the first time I have seen this one. It appears to be, though.

Q. Have you, in your office as City Engineer—do you have anything comparable to this?

A. Yes, that map that you have a copy of there.

(Testimony of James Wilcox.)

Q. Now, will you examine Plaintiffs' Identification "9", and particularly with reference to Lot 6 of Block 4, and Lot 6 of Block 4 as appears on Plaintiffs' Exhibit "F", and tell the Court whether or not the two maps coincide with reference to the size of the lot and the meander lines and directions and bearings and so on?

A. Lot 6 in Block 4?

Q. Yes, this is Lot 6 in Block 4, and this is Lot 6 in Block 4 (indicating).

A. This map (indicating), has more bearings on it than this one (indicating), but the dimensions match up. [21]

The Court: Just a minute, I can't tell what you mean by "this".

Mr. Johnson: Plaintiffs' Exhibit "F" has more bearings on it?

A. Yes, they have a bearing mark in the dividing line between Lot 6 and Lot 5 in Block 4.

The Court: Now, that is on which map?

Mr. Johnson: On the official map; our Exhibit "F".

The Court: On the exhibit?

A. Exhibit "F" has more bearings on it.

The Court: That is the old map?

A. The old map; yes.

Q. By "bearing", do you mean a directional bearing, bearing either way, from north and south?

A. Yes. That has one more, but the dimensions are all the same and the—all the rest of the sides

(Testimony of James Wilcox.)

have the same bearings and same dimensions. That would mean that the dimensions on this copy that I brought up, and the bearing on it would have to be the same as on the old map here.

Q. So that if it was left off here, it doesn't mean that it varies in any way from the original Exhibit "F"? A. No.

The Court: You could put that bearing in right now.

A. Yes.

Q. Would you put the bearing on Plaintiffs' Identification "9" [22] as it appears on Plaintiffs' Exhibit "F", the one that is missing?

The Court: Maybe you had better take it down to the table so you can get it better.

A. I can do it right here.

The Court: Just a minute, the meander lines of the river are the same on both maps?

A. They are.

Q. And the same bearings on the meander lines on the river appear on Plaintiffs' Exhibit "F" as they do on Plaintiffs' Identification "9"?

A. They do.

Q. So that now, with the addition of this bearing along the westerly line of the lot, which you have just placed on Plaintiffs' Identification "9", Plaintiffs' Identification "9" now, with reference to Lot 6 and Block 4, is exactly the same as it appears on Plaintiffs' Exhibit "F", is that correct? The two are now the same?

(Testimony of James Wilcox.)

A. Yes, sir, they are. There is a discrepancy in here between the total distance of the south boundary of Block 4. On the old map it is given 574.8 feet. On this copy I have it is 550.1 feet.

Q. Well, that is the overall distance of the block?

A. That is the overall distance of the block.

Q. I am talking now about Lot 6. Are the dimensions the same? [23]

A. Yes. And it is the same distance from the center line of Lacey Street to establish that one southwest corner.

Q. So that even if there may be a difference in the length of the block that is shown, Lot 6 is the same on both Plaintiffs' Exhibit "F" and Plaintiffs' Identification "9", is that correct?

A. Yes, sir.

Q. Now, Mr. Wilcox, the north boundary of Lot 6, as shown by Plaintiffs' Exhibit "F", do you know what that corresponds to, with relation to the Chena River?

A. According to the survey notes, it is the left meander line of the Chena River.

Q. Which constitutes the north boundary of Lot Number 6? A. Yes, that is right.

Q. As shown by Plaintiffs' Exhibit "F", and also now as shown by Plaintiffs' Identification "9", is that correct? A. That is correct.

Q. Do you have any questions? At this time, your Honor, I would like to offer in evidence Plaintiffs' Identification "9" as being a true and correct

(Testimony of James Wilcox.)

copy of the original plat, with reference to Lot 6 in Block 4.

Mr. Taylor: If the Court please, I am going to object to the admission of this as an exhibit for the reason it is not an exact copy of the official map. There is some meander lines on that one, and also the boundaries of the city on that [24] which are not shown on this map.

Mr. Johnson: I think the witness has testified, your Honor, that the—both maps coincide with reference to Lot 6 in Block 4.

The Court: Well, you have one map in, anyway. That is all you need. There is nothing about—
(interrupted)

Mr. Johnson: Well, the only purpose I had in mind was to try to get this back to the Recorder's office. It doesn't matter. It is in, so I am not concerned.

The Court: I will sustain the objection.

Q. I will show you Plaintiffs' Identification "3", Mr. Wilcox, and I will ask you to look at that, and can you compare that with Plaintiffs' Exhibit "F", with reference to Lot 6, and state whether the measurements there, as shown, coincide?

A. Well, this is omitted as a bearing between Lots 5 and 6 in Block 4, as were omitted on that other plat.

Q. Would you put in that bearing? Now, the original Lot 6 of Block 4 on Plaintiffs' Identification "3" corresponds exactly with Lot 6 of Block

(Testimony of James Wilcox.)

4 as shown on Plaintiffs' Exhibit "F", is that correct, with the addition of this bearing which you have put in?

A. No, you wouldn't be able to locate this Lot 6 from this plat that has been drawn up, because it is not tied into the street intersections here.

The Court: What is that, Mr. Wilcox? [25]

A. It is not tied to any definite location.

Q. Well, isn't this the location survey monument? (Indicating).

A. Yes, it is, but there is no measurement tie-up from this monument to this block. It would have to be tied in from this street intersection to this meander line (indicating).

Q. Where that bearing is in there (indicating)?

A. Yes, but there is no dimension. It would have to be this dimension. It is obviously the same location.

Mr. Johnson: Do you have any questions?

Mr. Taylor: No questions.

Mr. Johnson: That is all, Mr. Wilcox. Thank you very much.

(Whereupon, Mr. James Wilcox was excused as a witness and left the witness stand.)

Mr. Johnson: I would like to recall Mr. Nordale.

A. H. NORDALE

having previously been duly sworn as a witness, resumed the stand for further direct examination.

Direct Examination
(Continued)

By Mr. Johnson:

Q. Your name is A. H. Nordale, and you have been previously sworn and testified in this case, is that correct? A. I have.

Q. Now, Mr. Nordale, you say you recall when there was a saw [26] mill on Lot 6 in Block 4 of the Townsite of Fairbanks, is that correct?

A. I do.

Q. Do you know who operated that saw mill?

A. Carroll and Parker.

Q. And do you recall how the Chena River—or the channel of the Chena River behind Lot 6—ran at the time the saw mill was there?

A. The saw mill was on a cut bank and there was an eddy behind it.

Q. Now, will you look at Plaintiffs' Exhibit "F" and with reference to Lot 6 in Block 4, can you indicate on this map where the saw mill was located, and where this eddy was that you speak of?

A. The saw mill was in this area in here (indicating).

The Court: Don't say that. I can't see what you are talking about.

Mr. Johnson: He is indicating the east portion

(Testimony of A. H. Nordale.)

of Lot 6, along the edge of Lacey Street, is that correct? A. That is correct.

Q. And where was the eddy that you speak of?

A. The eddy was due north of the mill site.

Q. Well, did the river at that time come right up to the back end of the saw mill?

A. Yes. The eddy was used as a mill pond at the time. [27]

Q. Is that in this bend of the Chena that is indicated on the map just east of Lot 6? Was the eddy—?

A. No, the eddy extended back, westerly through Lot 6—Lot 5 and 4, at that time. The channel was—(interrupted)

Q. Then just directly north—?

A. Of the mill.

Q. Of Lot 6 and the mill?

A. They had the drag, or whatever they used to bring the logs out.

Q. Was that an incline?

A. That was an incline; yes.

Q. A slip of some sort? A. Yes.

Q. Where was that located with reference to the north end of the lot?

A. Well, it extended from the water up into the mill.

Q. On the north end?

A. On the north end.

Q. And the water at that time came right up to the north end of the lot, is that correct?

(Testimony of A. H. Nordale.)

A. What would be the meander line here (indicating).

Q. And this slip or incline, what was that used for? A. Bringing up logs to the saw.

Q. From the——?

A. From the mill pond. [28]

Q. Now, after the mill was removed—or rather, first, do you know whether or not the Carroll and Parker had any difficulty with silt or sand gathering in their mill pond?

A. That only by hearsay.

Q. You don't know anything about it?

A. No, I don't.

Q. All right. Now, after the mill was removed, when did—when was this building built that you mentioned awhile ago, do you recall, about?

A. I can't give you a definite date.

Q. But it was sometime——?

A. It was about 1906.

Q. All right, and that building is the present building that is now situated on the lot, is that correct? A. Yes.

Q. And your best estimate is that that building is about 85 or 90 feet long and about 50 feet wide?

A. Umhummm.

Q. And that has always been that long, is that correct, from the time it was first placed there?

A. That is right.

Q. Now, when it was first built, how was the

(Testimony of A. H. Nordale.)

north end of the building constructed? Was it built on land, or what?

A. The foundation was piling.

Q. And then, first, the water came right up to the north end [29] of that building, is that correct?

A. It came up to it; yes.

Q. During the interim from the time the saw mill was built and until the building was built, the bank on the north side of the—or, rather, on the north side of this lot, the Chena Bank had been building up during those years, had it not?

A. That is correct.

Q. And can you describe over the period of years what the action of the Chena River has been, with reference to the changing in the channel just north of the—this Lot 6 in Block 4?

A. During the years after 1908—that is when we had been absent from Fairbanks for some time—we returned in 1908 and reconstructed a hotel on Lot 4. The river was cutting away on the north bank on what would be the south boundary of Slaterville. At that time there was a farm—chicken houses and green houses and so forth on the bank of the river. A Mrs. Anderson, I believe, was the owner of the green house and buildings, and the bank cut through there and that side is now in the channel. It continued to deposit soil—
(interrupted)

Mr. Taylor: Just a moment, Mr. Nordale. I

(Testimony of A. H. Nordale.)

object. Where was Mrs. Anderson's green house and chicken house? Which side?

A. It would be on the south bank of the river—that is, [30] it would be on the north bank of the river along Slaterville. It would be on the Slaterville boundary.

Q. The south boundary of Slaterville?

A. South boundary of Slaterville.

Q. You say at that time this chicken house or greenhouse was located in what is now at the present time, part of the channel of the river?

A. That is correct.

Q. So that over the period of years the channel has moved from the south—away from the south bank to the north bank of the river, is that correct?

A. It has been cutting in there consistently; yes.

Q. And that has been building up on the south bank, on the north boundary of Lot 6?

A. That is correct.

Q. Now, during the years has the Town of Fairbanks experienced high water and floods in the Chena?

A. Many times during those years, particularly before the dyke was put in up at—(interrupted)

Q. At the Tanana River, along the Tanana?

A. Yes.

Q. Before that, the Town of Fairbanks experienced many floods, is that correct?

(Testimony of A. H. Nordale.)

A. That is correct.

Q. Would those floods come more than one time in a year? [31]

A. Quite often twice a year. We would have a break-up flood.

Q. When would that come about?

A. Whenever the ice broke. Sometimes there would be a jam in the ice.

Q. Just speaking generally, what time of year?

A. Late in April, early in May. Approximately from the 20th of April to the 12th of May.

Q. Depending on when the ice broke up?

A. Correct.

Q. And you usually had a flood then, is that right?

A. Not always, no, but in the case of an ice jam we had a flood.

Q. Now, these floods would cause the water to rise considerably, is that correct? A. Yes.

Q. And when the waters receded, was any alluvian deposit remaining after the flood?

A. There was.

Q. Is that the part of the way in which the north end of Lot 6 has been building up over the period of years? A. That is.

Q. Do you recall, you said that sometimes you had floods other times of the year. When were they? What time of the year would that be, about?

A. During the summer whenever we had heavy rains and the Chena River, or the Tanana would

(Testimony of A. H. Nordale.)

reach high stages, we would have a flood stage of the Chena River.

Q. And would the same action take place, that is, after the waters had receded would there be some deposit of alluvial soil from the flood?

A. There would.

Q. And in addition to that, you say that the channel of the Chena River has gradually moved from south to north? A. Yes.

Q. So that the south bank of the Chena River has been building up and the north bank has been cutting away, is that correct, right near, with reference to Lot 6, at any rate?

A. That would be referred to as the right bank and the left bank.

Q. I guess I am not using the right terms, but looking down stream?

A. The right bank has been eroding.

Q. And the left bank?

A. The left bank has been building up.

Q. And the left bank borders on Lot 6, is that correct? A. That is correct.

Q. Now, during the years have you or your father—that is, you and your brother, as trustees, and your father before you, have you had possession of all of Lot 6 and the accretions [33] during—(interrupted)

Mr. Taylor: If the Court please, I believe that calls for a conclusion of law. I am going to object. No testimony there has been any accretion.

(Testimony of A. H. Nordale.)

The Court: I will sustain the objection.

Q. What, if anything, did you, as trustee, and your brother, as co-trustee, what have you done with reference to Lot 6 since it has been in your hands under the Nordale Estate Trust?

A. We have maintained the lot.

Q. Have you rented the building that is on the lot? A. We have.

Q. And has that been rented most of the time?

A. It has.

Q. Have you rented or have you paid the taxes on the lot? A. We have.

Q. Have you—what else, if anything, have you done with respect to the north end of this lot?

A. Kept it clear, maintained it physically.

Q. When you say you kept it clear—

A. Cleared of brush and—(interrupted)

Q. Can you refer to some specific instance of that?

A. Yes. In the Fall of 1945, I had the brush removed. At that time—(interrupted)

Q. Explain the brush that was there at the time.

A. There was a dense growth of cottonwood and willow and so forth on the lot, to the river.

Q. Down the river?

A. To the river, and I was in the City Administration at the time and we discussed the lot. The city had decided at that time to clear brush out all along the river, because it was harboring an

(Testimony of A. H. Nordale.)

element that was using these highways for important purposes.

Q. That is, the brush was?

A. The brush was, and at the time I did not wish to remove the brush because it made the whole site less unsightly with the brush, but we decided to remove it so I instructed Mr. Wehner to clear it. I worked with the street committee, and we decided to clear the ground, which included brush on the play field and so forth.

Q. Now, when you say you instructed Mr. Wehner to do that, at whose expense was that?

A. At my expense.

Q. You paid the city for the use of their equipment and men to—? A. That is correct.

Q. And have you a canceled check showing that payment? A. I have.

Q. Will you produce it, please? Did you retain the city, or did you retain Mr. Wehner to do this cleaning? [35]

A. The city was doing all of the cleaning at the time. Mr. Wehner was working for the city, was handling prisoners and so forth, so it was handled by the chairman of the street committee, Mr. Phillips.

Q. But Mr. Wehner did the work and received the pay for it?

A. It was the policy of the city for Mr. Wehner to bill—to bill the property owner for the services and remunerate the city for the portion that was

(Testimony of A. H. Nordale.)

performed by the city. Mr. Wehner also performed part of the services, personally, as a—as his own business enterprise.

Mr. Johnson: I ask that be marked.

A. (Continued): Removed garbage, and so forth.

Clerk of Court: Plaintiffs' Identification Number "11". Plaintiffs' Identification Number "12".

(Plaintiffs' Identifications Numbers "11" and "12" marked.)

Q. I will show you Plaintiffs' Identification Number "11", and I will ask you to tell the Court what that is?

A. Number "11", is a trade-off—Wehner's invoice which includes 5 hours of labor for seven men who were municipal prisoners, and Number "12", is the—oh, that is all Number "11". And the attached record is the city's receipt for the labor, signed by Mr. Fisher.

Q. And Number "12", can you tell what that is?

A. Is the check in payment for the invoice. [36]

Q. By whom is the check signed?

A. By myself, as trustee.

Q. And on whom is it drawn?

A. On the First National Bank of Fairbanks to the payment of Adolph Wehner.

Q. For how much money? A. \$47.50.

Q. And it is drawn against the account of the Nordale Estate Trust? A. It was.

(Testimony of A. H. Nordale.)

Mr. Johnson: We will offer Plaintiffs' Identification "11" and "12", if the Court please.

Mr. Taylor: Object, your Honor, upon the grounds it is incompetent, irrelevant and immaterial. Have no probative value on the issues.

Mr. Johnson: If the Court please, they indicate——(interrupted)

The Court: I think they constitute mere memoranda upon which he can make his oral testimony. It is not admissible on the part of the plaintiff.

Q. Well, Mr. Nordale, I take it then that in 1945 or '6 you expended the sum of \$47.50 to have the trees and brush cleared off the north end of Lot 6, is that right?

A. And any rubbish that had accumulated.

The Court: How much land was there by that time? [37] How much land on the north end of the lot?

Q. Do you know how far the lot extended at that time?

A. It extended about to the present boundary of the lot. I can't give it to you in feet. It is just about the same as the boundaries shown on the map. There may have been some subsequent accretion.

Q. I will show you Plaintiffs' Identification "3", and can you tell from that about what the boundaries of the lot were at the time you cleared the brush?

A. Approximately 219.19 feet on the west boun-

(Testimony of A. H. Nordale.)

dary, and approximately 308 feet on the east boundary.

Mr. Taylor: Just a moment.

Q. And the lot is about the same now as it was at that time? A. About the same.

Q. How far back from the Chena River did these trees and willows and cottonwoods, or whatever it was, extend?

A. They extended to the rear of the buildings on the lot. What we refer to as the Malone Buildings.

Q. That is the present building that is on?

A. Present building.

Q. So that all of the north portion of the lot north of the building was covered with trees and willows, is that correct? A. That is correct.

Q. And you had all of those removed?

A. That is correct. [38]

Q. Now, sometime previously did you or the Nordale Estate Trust permit the city to construct a little drainage ditch across the north portion of Lot 6?

Mr. Taylor: Just a moment, I object to the question, your Honor, as not proper—proper foundation hasn't been laid on it. Previous to what? I also believe that the answer, even if it was "yes" or "no", would still be incompetent, irrelevant and immaterial.

Mr. Johnson: I think, your Honor, he has a right to show what, if anything, he has done with

(Testimony of A. H. Nordale.)

the lot since they have had it and if they have permitted the city to build a drainage ditch, it seems to me that is perfectly competent.

Mr. Taylor: He said "prior to," but he didn't say prior to what.

The Court: I don't know. Over what part of the lot?

Mr. Johnson: Over any part of Lot 6.

The Court: I don't think there is any dispute about Lot 6 as defined by its original boundaries.

Mr. Johnson: Well, over the portion of Lot 6 lying north of the building—of the present building? A. Yes.

Q. And how long ago was that ditch built, do you remember?

A. As far back as I can remember, from time to time new ditches were put there with the consent of the property owner. The ditches, at times, crossed the existing lot and [39] went beside it—followed down beside the east boundary of the building, too. There was a ditch in there to drain First Street.

Q. Along the edge of Lacey Street?

A. Along the edge of Lacey Street, and also through the lot we permitted a ditch through the lot to drain pools on First Street.

Q. Now, do you remember whether or not the Chena River, or the waters in the Chena River, became clouded and muddy after they began mining up on Fairbanks Creek?

(Testimony of A. H. Nordale.)

A. No, I don't. I don't recall that.

Q. Now, Mr. Nordale, when, if ever, did you have any discussion with either of the defendants with reference to the north part of Lot 6? That is, the part of Lot 6 lying north of the present building, of the building that was on there. Did you have any talk with either of the defendants about it?

A. I did.

Q. Which one did you talk to?

A. Mr. Birklid.

Q. And where did that conversation take place?

A. In my office.

Q. In the Nordale Hotel?

A. In the Nordale Hotel.

Q. And who was present? [40]

A. Mr. Birklid, only, and myself.

Q. Now, will you explain to the Court what was said with reference to the north portion of Lot 6, lying north of the building?

Mr. Taylor: I am going to object to any further conversation until the time is established, whether it was before or after—(interrupted)

Mr. Johnson: Very well.

Q. When did that conversation take place? I am sorry I overlooked that. Do you remember?

A. It would have been in late February or early March of 1948.

Q. Was that before?

A. It was probably during the month of March.

Q. Was that before the defendants had made

(Testimony of A. H. Nordale.)

any attempt to take possession of the part of Lot 6?

A. It was.

Q. Now, will you explain to the Court what was said by you and by Mr. Birklid?

Mr. Taylor: If the Court please, I am going to object to the testimony as to what was said between the defendants and the witness in this case because it won't go to prove any title to that particular part of the ground in Mr. Nordale or in the Trustee. I think anything Mr. Nordale would say at that time would be self-serving. [41]

Mr. Johnson: I am not concerned with what Mr. Nordale said, I am concerned with what Mr. Birklid said concerning this property and I think it is perfectly competent.

Mr. Taylor: What Mr. Birklid would say would be no proof of the ownership of the part of the land lying north of Lot 6 Block 4.

The Court: Well, of course I can't anticipate what the testimony would be. I don't know what the relevancy would be. I will permit the question and you can move to strike it if it proves irrelevant.

Q. Will you explain this conversation that you had?

A. Mr. Birklid called at my office and wanted to lease a portion of that lot—the north portion.

Mr. Taylor: If the Court please, I am going to object to the question and ask the same be stricken out, not competent, relevant or material.

(Testimony of A. H. Nordale.)

It does not go to prove any of the issues in the Complaint.

Mr. Johnson: No, but it tends to show the defendants had knowledge that this was property belonging to the Nordale Estate and treated it as such when they attempted to lease it.

The Court: Well, it might possibly be relevant in rebuttal, but I can't see where it is now. Did you move to strike that?

Mr. Taylor: Yes, your Honor.

The Court: Very well, I will strike it. [42]

Mr. Johnson: Very well.

Q. I will show you Plaintiffs' Identification "1", Mr. Nordale, and will ask you if you have ever seen that before? A. I have.

Q. Now, that purports to be a photograph taken in 1905, according to the information on the front of there. You were in Fairbanks at that time, were you?

A. No, I wasn't. I left there a month previously to go to Cleary City. I had gone to Cleary City.

Q. Had you been in Fairbanks any time during the year 1905?

A. I lived in Fairbanks until May 5, 1905.

Q. That was about a month before this was taken?

A. This was taken on June 13, the date on the print.

Q. Now, do you recognize the subject matter of that picture? A. I do.

(Testimony of A. H. Nordale.)

Q. Is that a true and correct representation of the subject matter as you recall it at the time?

A. It does.

Q. Does that show—that picture show the saw mill that was on Lot 6 at that time?

A. It does.

Q. Is that saw mill indicated in any way there?

A. By a cross.

Q. Pen and ink cross?

A. Pen and ink cross. [43]

Q. Now, I will show you Plaintiffs' Identification "2", and will ask you if you have ever seen that before? A. I have.

Q. And what does that purport to be, if you know?

A. That shows the left bank of the river, including the buildings on Lot 6.

Q. At what time?

A. That was in October of 1915.

Q. Were you living here in Fairbanks at that time?

A. No, I left Fairbanks a month previously to attend the University.

Q. Well, does it—at the time you left, did the left bank of the river as it appears on that photograph—was that the same as it appears?

A. It was the same; yes. The water was probably higher, a little higher, but the bank was the same.

Q. You say that it shows the building on Lot 6?

(Testimony of A. H. Nordale.)

A. It does.

Q. Now, can you tell—is that building indicated in any way on that? A. By an inked cross.

Q. Now, along the side of the building there appears to be some sort of a pipe line. Do you know anything about that?

A. That was a pipe line installed by the Fairbanks Laundry Company to take water out of the river. [44]

Q. And what, if anything, do you recall about that pipe line from year to year?

A. It required extensions from time to time as the bank kept creeping to the north.

Q. As the river channel changed from the south to the north, it had to be lengthened?

A. Yes.

Q. Was that done every year, do you know?

A. I know I wouldn't swear to that. I know I had seen it done several times.

Q. You had seen them lengthen the pipe?

A. I have.

Q. Did the Chena River flood this past year?

A. A year ago.

Q. I mean in 1948? A. Yes.

Q. Did it flood after the defendants had moved a building onto the rear portion, or the north portion of Lot 6? A. It did.

Q. Do you recall how high the water was, or did it come up around the building that the defendants had placed on that property?

(Testimony of A. H. Nordale.)

A. It did. It surrounded the buildings.

Clerk of Court: Plaintiffs' Identification Number "12". Oh, I beg your pardon, Number "13". Plaintiffs' Identification [45] Number "14".

(Plaintiffs' Identification Numbers "13" and "14" marked.)

Q. I will show you Plaintiffs' Identification Number "13", and ask you what that is, if you know?

A. That is a picture of First Avenue.

Q. Looking in what direction?

A. Looking west.

Q. And with reference to Lot 6, Block 4, where would—

A. It shows the street in front of Lot 6.

Q. It shows the street in front of Lot 6, Block 4? It doesn't show the buildings on it?

A. No, it doesn't. It shows the buildings on Lots 5 and 4.

Q. But that was taken right in front—it does show the street in front of Lot 6? A. It does.

Q. By whom was that picture taken?

A. By myself.

Q. And when was it taken? A. 1911.

Q. Was that during a flood? A. Yes.

Q. And the waters appearing there was the waters of the Chena? A. Chena and Tanana.

Q. During flood stage? A. Umhummm.

Q. What time of year was that, could you remember?

(Testimony of A. H. Nordale.)

A. Break-up time. Probably in May. Early May. I don't recall the date of the break-up.

Mr. Johnson: We will offer Plaintiffs' Identification "13".

Mr. Taylor: I object, your Honor, upon the grounds it is incompetent, irrelevant and immaterial. Has no bearing upon the issues now before the Court. It shows the condition that existed some place other than the location of the property which is in question here, and it also—the picture was made after the defendants entered upon the ground back of Lot 6 of Block 4.

Mr. Johnson: If the Court please, it shows—it corroborates the testimony of the plaintiff in that the flood conditions were affecting this property; in that particular year it went clear up to—covered First Avenue.

The Court: Well, isn't accretion deposits made gradually and imperceptibly? Isn't that what it is? Not suddenly by flood?

Mr. Johnson: It can be deposited in any manner. Floods help to deposit it. It can be gradual and imperceptible, but the deposit by alluvial flood waters are a part of the way.

The Court: All right, objection sustained. [47]

Q. I will show you Plaintiffs' Identification "14", and will ask you to tell the Court what that is, if you know?

A. That is a picture showing Lots 4, 5 and 6 during the year 1907.

(Testimony of A. H. Nordale.)

Q. Was that taken—what side of the river was that taken from?

A. It was taken from the right bank of the river, looking towards the south.

Q. And does it show the present building that is now on Lot 6?

A. It shows the first half of the building, or the portion that was constructed first. There were two portions of the building, but one was constructed before the other.

Q. Were you in Fairbanks at the time?

A. No. That picture was given me by a man with whom I was employed as a photographer. Albert Johnson. It was taken by Mr. Johnson.

Q. You weren't here at the time?

A. I was on Cleary.

Q. How long had you been on Cleary?

A. Three years, with intermittent trips to town.

Q. Did you come into town from time to time?

A. I was in town in 1907, but I wouldn't recall the date. I wouldn't say I was in town during the time this was made.

Q. Does this purport to represent a true and correct picture of the conditions at that time, as far as you know? A. That is correct. [48]

Mr. Taylor: I object on the grounds he testified he wasn't here and wouldn't know at that time.

Mr. Johnson: I haven't offered it yet, your Honor.

(Testimony of A. H. Nordale.)

The Court: Well, I will strike. It may be stricken.

Q. Mr. Nordale, prior to the time that the defendants moved into this lot, what, if anything, had you done with respect to selling?

A. I had listed it for sale.

Mr. Taylor: If the Court please, I am going to move to strike the answer upon the grounds it is immaterial and irrelevant and incompetent, and also has no bearing upon the ground. The property you are claiming you might not have a title to.

The Court: Motion granted. It may be stricken.

Q. What, in your opinion, is the reasonable value of the property that is now occupied by the defendants?

Mr. Taylor: If the Court please, we object to the question upon the grounds the witness has not been properly qualified to state what the reasonable rental would be.

The Court: You can show his qualifications.

Q. Well, Mr. Nordale, you now rent a portion of Lot 6 in Block 4, do you? A. I do.

Q. What part of Lot 6 in Block 4 do you rent?

A. I rent the two buildings that comprise the Malone property [49] and the little warehouse.

Q. Next to it?

A. Near it—over near the Sani-System Cleaners, I believe.

Q. What is the rental that you derive from those two buildings?

(Testimony of A. H. Nordale.)

A. From the three I derive \$185.00.

The Court: What period of time?

A. Per month.

Q. And are you familiar with the rental value of vacant property—that is, ground rental values in Fairbanks, generally? A. Generally, yes.

Q. And the portion of Lot 6 in Block 4, which has been taken over, or which has been occupied by the defendants, what, in your opinion, would be a reasonable rental value of that property?

Mr. Taylor: If the Court please, I object to the question on the ground there is no proof that the land lying to the north of Block 6, or Lot 6 of Block 4 is a part of Lot 6. It is assuming something that has not been proven.

The Court: Objection overruled.

A. \$150.00.

Q. A month? A. Per month.

Mr. Johnson: I believe that it has been admitted, your Honor, that the defendants were requested to vacate and that they refused to do so. I don't believe that it is necessary to [50] offer any proof on that.

The Court: Nothing that has been admitted has to be proved.

Mr. Johnson: You may cross-examine. Well, it is almost 12:00 o'clock. You may cross-examine.

Mr. Taylor: If the Court please, I have quite a long examination. I wonder if we might recess until 2:00 o'clock?

(Testimony of A. H. Nordale.)

The Court: Well, maybe so. I would like to ask Mr. Nordale a question.

Examination By the Court

By Judge Pratt:

Q. To what height did the ground fill in to the north of your Lot 6?

A. Your Honor, I don't know what depth the water was, originally.

Q. Comparing the level of the ground at the south end of your lot, comparing the filling in with the height of that same gauge?

A. The south end, I imagine, I believe it filled in about 8 or 10 feet. Eight feet, probably, and then it has filled in—(interrupted)

Q. What I want to know is, is it much lower than the south end of the lot—the north part that is filled in, how much lower or how much higher is the ground surface that has filled in? [51]

A. It is lower. The ground surface that is filled in is lower.

Q. How much lower?

A. Eight feet, about, ten feet. That is an estimate.

Q. It is still above the water in ordinary high water mark?

A. Yes. The upper is not above the extra high water mark. The ground, where the buildings rest, can be flooded by high water.

Q. Ordinary high water?

(Testimony of A. H. Nordale.)

A. No. No. It wouldn't be flooded by ordinary high water. The ground to the north of the river bank normally isn't flooded by an ordinary stage of water at the present time.

Q. That is what I wanted to know.

Questions by Mr. Johnson:

Q. The present meander line of the Chena is along the north edge of this present—of Lot 6, is not flooded except in unusually high water, is that correct?

A. Stages of high water, that is right.

Q. But there is a gradual slope from the north end of the lot, I mean from the south end of the lot to the north end of the lot, gradually sloping downward?

A. No, I would say it is probably somewhat opposite. I believe that the bank is probably a little higher on the north end than it is next to the building.

Q. What I am talking about now is about the south—I believe [52] the Court asked you how much, if any, it sloped from the south boundary of the lot right along the edge of First Avenue, back to the river and over all it is—is it a gradual slope or does it?

A. No, there is a precipitous jog right near the end of the buildings.

Q. Then there is a depression in there?

A. There is a depression in there. The silt has

(Testimony of A. H. Nordale.)

not deposited in there as fast as it has farther out to the north.

Q. Up to the meander line?

A. That is correct.

Q. So that the north portion of Lot 6 is slightly higher than the depression immediately at the rear of the building?

A. That is as I recall it. There is a little depression to the rear of the building that hasn't filled in as rapidly as it has farther north.

Mr. Johnson: That is all.

The Court: Take a recess until 2:00.

(Whereupon, at 11:53 o'clock a.m., Court was recessed until 2:00 o'clock p.m.)

Be It Remembered, that at 2:00 o'clock p.m., the trial of the above-entitled cause was continued, the parties above-mentioned again appearing in court in person and by their attorneys of record; the Honorable Harry E. Pratt, District Judge, [53] presiding;

And Thereupon, the following proceedings were had:

The Court: Counsel ready to proceed with Nordale vs. Waxberg?

Mr. Johnson: Plaintiff is ready, your Honor.

Mr. Taylor: The defendant is ready.

Mr. Johnson: If the Court please, at the recess at noon Mr. Nordale was on the stand and ready for cross-examination. Before he continues, I would

like leave to call Mr. Lee Linck for some testimony that won't take very long, and I believe counsel has no objections.

Mr. Taylor: I have no objections.

The Court: Very well.

Mr. Johnson: Mr. Lee Linck.

LEE LINCK

called as a witness on behalf of the plaintiffs, was duly sworn and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. Lee S. Linck.

Q. And where do you reside, Mr. Linck?

A. Fairbanks.

Q. Are you engaged in business in Fairbanks?

A. Yes. [54]

Q. What is the nature of that business?

A. Civil Engineering.

Q. Do you operate the business known as the Alaska Architectural and Engineering Company?

A. Yes, I do.

Q. Are you familiar with property known as Lot 6, Block 4 of the Townsite of Fairbanks?

A. Yes.

Q. Did you have occasion last Spring, I believe, in April of 1948, to make a survey of that property at the request of Mr. Nordale?

A. Yes, I did.

(Testimony of Lee Linck.)

Q. And as a result of that survey did you prepare a plat? A. Yes.

Q. I will show you Plaintiffs' Identification "3" and will ask you what that is, if you know?

A. This is a plat of the A. H. Nordale property in Lot 6, Block 4 of the Fairbanks Townsite.

The Court: Give him the loudspeaker, Mr. Clerk.

A. This is a plat of the A. H. Nordale property, Lot 6, Block 4, Fairbanks Townsite, as we surveyed it in April, 1948.

Q. And does that plat show the original meander line of the Chena Slough?

The Court: Chena Slough? [55]

Mr. Johnson: Chena River, excuse me.

Q. Of the Chena River as it appears on the official plat of the Townsite of Fairbanks?

A. Yes, it does.

Q. Does it—does that plat show the extension beyond the meander line as shown by the original plat of the Town of Fairbanks and to the present meander line of the Chena River?

A. Yes, it does.

Q. Does it show the distances on the metes and bounds, or rather—strike that out. Does it show—that plat show the metes and bounds of the property known as Lot 6 in Block 4, as it now appears and extends to the present meander line of the Chena River?

Mr. Taylor: Just a moment, I am going to ob-

(Testimony of Lee Linck.)

ject to the question, your Honor, because of no testimony that Lot 6, Block 4, does extend to the Chena River.

The Court: I don't think there is any evidence showing where the meander line was. I will sustain the objection.

Q. The line on this plat marked in pencil "A" and "B", is that—what does that line indicate on the plat?

A. That indicates the original meander line as indicated on the official plat of the Fairbanks Townsite.

Q. Now, is the present meander line of the Chena River indicated on that plat, also?

A. It approximately—(interrupted) [56]

The Court: How did he determine what was the meander line?

Q. How did you determine—place the original meander line, as shown by the official Town of Fairbanks on that map?

A. We, in making this survey—the line indicated there as a dotted line indicates the approximate meander line—present meander line of the river.

Q. And what did you—from what did you—or what did you use as a basis for determining the present meander line, or the approximate present meander line?

A. It is a point at which vegetation is present,

(Testimony of Lee Linck.)

and also the point at which there is a sharp break in the bank of the river.

Q. Showing where the water?

A. Between—that is incorrect. We established that merely as a bank line of the river, and it is the point at which there is indications of vegetation.

Q. So that the point used is above the normal water level of the river, is that correct? Slightly above?

A. Above the mean water level.

Q. Above the water level of the river. Did you make that survey—in making that survey did you use any established survey monument, as a point of beginning?

A. Yes, we did.

Q. What is that monument? [57]

A. That is the street intersection which is the center line of First and Lacey Streets.

Q. Is there an established monument there?

A. There is a City Survey Monument there, and also one at the intersection of Second Avenue and Lacey Streets and those were the two monuments which we used to begin the survey.

Q. And they are established monuments, are they?

A. Yes, they are.

Q. Do they—I will show you Plaintiffs' Exhibit "F" and I will ask you to look at this portion here (indicating), known—that is marked Lot 6 in Block 4, and will ask you if the survey monuments which you used appeared on Plaintiffs' Exhibit "F", if you can tell?

(Testimony of Lee Linck.)

A. Yes. I believe this is—that is S.I. 9 and S.I.—Street Intersection—36.

Q. And they are the two survey monuments which you used to begin your survey as shown by Plaintiffs' Identification "3", is that correct?

A. That is correct.

The Court: Will you hold that speaker up a little?

A. That is correct.

Q. Now, what, if anything else, is indicated within the boundaries of the property which is marked here Lot 6 in Block 4. There are certain outlines in dotted lines. Can you explain [58] what they are?

A. Yes. The dotted line in the southwest corner of Lot 6 is the building which is—which now occupies that space. I believe it is the Economy Store is now located in that building.

Q. And that dotted line shows the outline?

A. It indicates the outline of that building. And the dotted line on the southwest quarter of Lot 6 indicates the building adjacent to the other building and facing First Street.

Q. Now there is another dotted line outlined just north of the Economy Store building. What is that, if you know?

A. That indicates the outline of the building occupied by Birklid and Waxberg.

Q. And did you indicate on this plat the portion of the property in question which has been occupied

(Testimony of Lee Linck.)

or located by Waxberg and Birklid, the Defendants, in accordance with their location notice?

A. Yes, we have. It is indicated in — by a hatched line on this map.

Q. And that follows around the metes and bounds description as given in their location notice?

A. Yes, it does.

Q. And by a "hatched line," you mean diagonal marks along the inside of the area is indicated, is that right? [59] A. That is correct.

Q. Now, is this plat, Plaintiffs' Exhibit "3," a true and correct plat of the area involved as indicated from your survey or indicated by your survey? A. Yes, it is.

Q. Did you make this survey yourself, personally? A. Yes.

Q. And did you prepare this plat personally?

A. Yes.

Mr. Johnson: We would like, now, your Honor, to offer Plaintiffs' Identification "3."

Mr. Taylor: No objection.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "G."

(Plaintiffs' Identification "3" admitted in evidence as Plaintiffs' Exhibit "G.")

Mr. Johnson: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Linck, calling your attention to Plain-

(Testimony of Lee Linck.)

tiffs' Exhibit "F," would you state whether or not you know what the dotted line at the north boundary of Lot 6 of Block 4 represents?

A. I would say that it represents the city boundary, according to this survey. The north city boundary.

Q. Now, could you state whether or not you know what the solid [60] black line that lies north of the dotted line—what that would represent?

A. It appears to indicate the water line of the Chena River.

Q. Would that be the—would that correspond with the line you said was where the bank broke down—the crest of the bank?

A. That symbol is used to indicate the bank line of the river, but not necessarily an abrupt break.

Q. Well, wouldn't this show more or less of an abrupt break, due to the fact you have these other smaller lines to indicate the beach—more or less what you would call the beach?

A. Well, that particular symbol is used to indicate the bank of the river and unless it is definitely stated whether it is mean high or mean low water line, it is difficult to state.

Q. Does this map have any legend on here that would indicate that?

A. No, not that I know of.

Q. Have you made an examination of this map?

A. This is the original map? The official city

(Testimony of Lee Linck.)

Fairbanks Townsite map has no legend on that indicating that.

Q. I take it, then, the dotted line is the property line, is that right? The city limit line?

A. Yes, that is the boundary.

Q. Then your next line would be the crest of the bank of the [61] Chena Slough in 1909?

A. Yes.

The Court: May I see it, Mr. Taylor.

Q. Calling your attention to Plaintiffs' Exhibit "G," did you make a contour map of the land lying north of Lot 6 of Block 4? A. No.

Q. Did you run any levels on that so that you could state positively the difference in elevation between this building which you have identified as the Nordale Building, and the Waxberg building?

A. No.

Q. And could you state what the difference in elevation is between the back of the Nordale Building and the meander line or the bank line, as you call it, of the Chena River? A. No.

Q. Now, you spoke of vegetation on the bank of the river. What kind of vegetation was that?

A. Willows and grass.

Q. How big were those willows?

A. I don't recall off-hand, but they weren't very large.

Q. Two or three inches in diameter?

A. No, not over an inch.

(Testimony of Lee Linck.)

Q. And where were they in relation to the river bank?

A. Well, some were located very near the dotted line that [62] we have indicated on that map.

Q. Now, also calling your attention to—now this is a building which is known as the Nordale building. Could you state whether or not that this part of the lot upon which that building is located, is higher or lower than the Birklid and Waxberg building?

A. What do you mean by building? You mean the floor level?

Q. Yes, the floor level, or the contour of the land. Is it lower in here near the Nordale building, or is it lower here near the Waxberg building?

A. That is difficult to state. There is a low section just between the two buildings.

Q. And could you state what is the difference in elevation of the ground immediately in front of the Waxberg building facing on Lacey and Lacey Street, itself? A. No, I couldn't.

Q. You paid no particular attention to that?

A. No.

Q. In your recollection would you say that it is about the same elevation?

A. No, the ground directly in front of the building is lower than near the intersection of Lacey and First Streets.

Q. How much lower? A. I wouldn't say.

Q. Now, when you surveyed this did you find

(Testimony of Lee Linck.)

any old stakes, [63] Mr. Linck, on either one of the corners? A. No.

Q. No location? A. No.

Mr. Taylor: That is all.

The Court: Just a minute. Let me have the map, will you?

Examination by the Court

By Judge Pratt:

Q. Mr. Linck, did you chain from the corners of Lot 6 on out to your point number 2 on the river bank? Did you chain that? A. Yes, we did.

Q. And was it 308 feet, as shown by the map here? A. Yes, it was.

Q. And then for instance, then did you go along and determine the meander line of the river on down to corner number 3, or how did you determine that?

A. We located corner number 3 and where we indicated by a dotted line the approximate bank line between those two posts.

Q. And how far was it from the southwest corner of Lot 6 up to the corner number 3? The same as— A. As indicated on the map.

Q. 209.19? [64]

A. If that is what is indicated on the map; yes.

Q. Was it—did you walk along the meander line between corners 2 and 3? A. Yes.

Q. Along the river bank and that seemed to you like a correct meander line, did it? A. Yes.

Q. Shown by the hatched line?

(Testimony of Lee Linck.)

A. (Witness nodded.)

Q. And that is the correct distance for that line, is it, as shown on the map? A. Yes, that is.

Q. Is it drawn to scale, the scale that you mentioned? A. Yes, it is.

Q. Well, is this lot that you surveyed beyond the original boundaries of Lot 6, is that above or below the water line of the Chena River? Is it filled with water or with land now?

A. It is covered with land.

The Court: I guess that is all.

Mr. Johnson: Did you want—

Mr. Taylor: No further cross-examination.

Redirect Examination

By Mr. Johnson:

Q. Did you make up a metes and bounds description of the area [65] which was surveyed on the basis of your survey? A. Yes, we did.

Clerk of Court: Plaintiffs' Identification Number "15."

(Plaintiffs' Identification Number "15," marked.)

Q. I will show you Plaintiffs' Identification "15," and I will ask you if that is the metes and bounds description that you made up yourself?

A. Yes.

Q. And that is based on the survey as shown in Plaintiffs' Exhibit "G"? A. Yes.

Mr. Johnson: We would like to offer this, if the Court please.

(Testimony of Lee Linck.)

The Court: Is that description the same as you have set forth in Paragraph III of your Amended Complaint?

Mr. Johnson: Yes, your Honor.

The Court: And that is admitted, isn't it?

Mr. Johnson: I believe it is. No; no, not Paragraph III, Paragraph I of the Amended Complaint is, your Honor. Paragraph III was the description based on the location notice of the Defendants.

Mr. Taylor: If the Court please, I want to object to the admission of this Identification in evidence due to the fact [66] that it is—the description there does not conform with the official map that has been introduced in evidence. The official map shows Lot 6, Block 4 to be only 72 feet wide and that shows 308 feet.

Mr. Johnson: It is still the same metes and bounds description in this survey which has already been admitted, your Honor.

The Court: Well, that is just simply a description, a summary of what the map shows.

Mr. Johnson: That is correct.

Mr. Taylor: It reads in there that the description of Lot 6, Block 4, your Honor.

Mr. Johnson: Well, that is what the plat shows, and that is what our contention is, it is simply to assist the Court in determining the metes and bounds description.

The Court: Well, I will sustain the objection.

(Testimony of Lee Linck.)

It is just repetitious of the Pleading, anyway. That is all for Mr. Linck, is it?

Mr. Johnson: Yes, that is all.

The Court: Do you have anything further?

Mr. Taylor: No.

(Whereupon, Mr. Lee S. Linck was excused as a witness and left the witness stand.)

Mr. Johnson: I believe now, your Honor, Mr. Nordale was on the stand for cross-examination. I should like to ask [67] one or two questions in further direct, if I may?

The Court: Yes. Just take the stand.

A. H. NORDALE

having previously been duly sworn as a witness on his own behalf, resumed the stand for further Direct Examination.

Direct Examination (Continued)

By Mr. Johnson:

Q. Mr. Nordale, you are the same A. H. Nordale who testified in this case this morning?

A. I am.

Q. And you were previously sworn. Over the period of years that you have been familiar with this property that is in question in this case, do you know of any refuse or material that was dumped on the property north of the building that

(Testimony of A. H. Nordale.)

is now occupied by the Economy Store, and known as the Nordale Hotel, or Nordale Building?

A. No.

Q. Do you know of any refuse that was ever dumped on the property north of the original meander line of the Chena Slough?

The Court: What are you speaking of?

Mr. Johnson: Original meander line.

The Court: You are speaking of "slough."

Mr. Johnson: I don't know why I am so used to calling it a "slough." I mean the Chena River.

Q. Do you know of any refuse or anything that was dumped in the vicinity of the saw mill at the time the saw mill was there, or afterwards?

A. No, I don't.

Q. This change that has been taking place over the period of years in the channel of the Chena River, has that been a gradual and imperceptible change? A. It has.

Q. And it changed slightly from year to year, is that correct? A. That is true.

Q. But you couldn't stand down on the bank and actually watch it move away, the change would be over a—noticeable over a period of time from time to time, is that correct?

A. You would see some increase in the alluvial deposit; in stages of low water you might be able to discern there had been an increase during a normal stage or high stage.

Q. After a flood, in other words?

(Testimony of A. H. Nordale.)

A. After a flood, no. I speak of in cases of extreme low water, the bank, as the years went on, you could see the bank changing and coming up out of the water. It was a very gradual process.

Q. And could you see a corresponding decrease on the opposite side of the river?

A. I could.

Mr. Johnson: You may cross-examine. [69]

Cross-Examination

By Mr. Taylor:

Q. Mr. Nordale, how old were you when you came to Fairbanks?

A. I was a little over ten years.

Q. And how old were you when your father acquired the property which was the subject matter of this action?

A. Twenty-one—I was 27 years of age.

Q. Oh, you were 27. When you was a boy did you go down and play around the saw mill there?

A. We lived directly across the street from the saw mill when we first came to Fairbanks.

Q. And how far towards the river was Lacey Street built? A. Was it filled?

Q. Yes, Lacey Street. How far was it built?

A. Well, I imagine it was built to the point we refer to as the original meander line. To the cut bank. It was built to the cut bank.

Q. And do you remember a small stream that used to run into the Chena River at the foot of Lacey Street?

(Testimony of A. H. Nordale.)

A. There was a slough along the south edge of what is now the playground and there was also an old slough down First Street in front of the saw mill. There was quite a depression in front of the saw mill.

Q. And the surface water through those sloughs would flow into this, what you called an eddy, awhile ago? [70]

A. That I can't swear to. I wouldn't know.

Q. Now, you described this body of water that was at the foot of the incline up which they drew the logs as an eddy? A. That is true.

Q. Wouldn't that be better described as a little bite in the river? There was a point of land and back of that there was a little bite came in so there was still water?

A. There was an actual back current in there. Floating matter would swing in there. In the fall of the year, in later years I even fished in this eddy. The eddy extended down to that bank north of Lot 4 and upstream.

Q. Well, now, take from the—extend your east line of the lot on down the river, wasn't there a point come down, then the river kind of curved in back of that point a little bit, made some open slack water near there in which they used to have their boats and bobs in there?

A. There was open slack water in there in which the city moored its pile driver and so forth, that I recall.

(Testimony of A. H. Nordale.)

Q. What did the saw mill do with its sawdust, Hjalmar?

A. I can't answer that directly, because I wasn't familiar with the operation.

Q. Or the slabs, either? Did you ever see what they did with the slabs? A. No.

Q. Now, you say that the action of the Chena River has imperceptibly, [71] over a period of years, built that ground back of your building, up to the point that it is now, is that right?

A. That is true.

Q. And how far—how deep do you—would you believe that this alluvial deposits have built up, Mr. Nordale?

A. Well, I fell in off a pile driver once, and I went in over my head in it, but I don't know how far down it went, but that is right at that point.

Q. The water would be six feet deep there, wouldn't it? A. It probably would be.

Q. And then these accretions, as you call it, or this deposit of alluvial matter, has built that up to the surface of the water and up above the surface to the point it is now? A. That is true.

Q. And then this land that is in question, that extends from the meander line up the back of your building, how much higher is that now than the normal level of the Chena Slough—the Chena River?

A. Oh, probably four feet. Four feet, probably.

Q. Then your alluvial deposits, then, in that par-

(Testimony of A. H. Nordale.)

ticular eddy or bite, would total some ten feet then, or better? The river has deposited matter to the extent of ten feet, building that lot up?

A. When you speak—may I go back? When you speak of the present level of the river, the present level of the river [72] is much lower than it was prior to the construction of the dyke, Mr. Taylor, and the flow of Tanana water into this stream, so I don't know what, in the terms of the flow, the deposit would have amounted to.

Q. Now, you state that possibly twice a year there has been a flood which has deposited alluvial matter in that bite, which has built this lot up, is that right?

A. Well, for a long time that—that—that deposit was growing under a normal level of water and I said a couple of times, it may have been once a year, sometimes three times a year, or more, that the water reached higher than normal stage, but it depended entirely on rains and breakups, and so forth.

Q. Well, now, after that little bite had got filled up there until you could see the deposit, would you state then after one of these freshets, or one of these floods, how much would be added to the alluvial deposit that was in that depression there that was formerly this bite in the river?

A. I wouldn't know, Mr. Taylor. It really, from time to time it wasn't perceptible. You could see, in the course of the years you could see it

(Testimony of A. H. Nordale.)

growing in height, but at no time could I ever have seen a deposit I could have measured. I wouldn't know what the depth would be.

Q. You were here in '48?

A. All of '48, sir. [73]

Q. And you were here during the big flood of last year? A. Yes, that was '48.

Q. That was exceptionally high water, was it not?

A. Yes, that was. We have had that same thing several times, but it is an exceptional condition.

Q. Did you, by chance, happen to go down and look at this lot of yours and the land back of it, which is in question in this court, to see how much of an alluvial deposit was made during this flood of last year?

A. I know that there was some deposit. I didn't attempt to measure it, but I know there was some deposit of soil on the ground.

Q. Now, you also testified as to in 1945 that you had had some brush cut off of the land back of Lot 6 of Block 4? A. That is true.

Q. And willow brush was it?

A. Willows, poplars, probably cottonwood, seed that had drifted down the river, drifted into the area.

Q. And they were growing on that lot, though, were they not? A. They were.

Q. And isn't there at the present time some brush growing on there?

(Testimony of A. H. Nordale.)

A. I imagine there will be some small growth. I haven't examined it, Mr. Taylor, but I imagine there is some small growth. [74]

Q. How big was the larger trees? You say there was trees out off the back end of the lot?

A. Well, at least 12 or 14 feet high; probably higher.

Q. And at one time was there some cottonwoods growing directly back of your building on Lot 4 of—or Lot 6 of Block 4?

A. That is probably what I have reference to.

Q. Some cottonwoods about six inches in diameter?

A. I question—no; no, I don't believe there was any that large.

Q. And do you recall, during the times that you used to be down there, of a drain coming down there from the Fairbanks Laundry? And emptying in there near this bite?

A. The Fairbanks Laundry had a pipe in there in which it was drawing water from the river, and there was a First Avenue Street drain that went through Lot 6 on the easterly boundary and trickled down through this ground, and I believe that the Lacey Street storm drain cut in in one corner.

Q. Well, isn't it a fact that the Lacey Street storm drain went right down Lacey Street at the right of your lot and to the right of the land that is in dispute here?

A. Went down to the right of it?

(Testimony of A. H. Nordale.)

Q. Yes. A. Down on the eastern side?

Q. At the left side of the street, but on the right of the [75] property line?

A. Well, that would be on the east side of the property line, just abounding the property line on the east side.

Q. Yes, just on the east side of the line of the property?

A. I believe there was. There were several drains in there, numerous drains all through there.

Q. Isn't there a drain there now, Mr. Nordale?

A. There is a drain in there, yes, that the city has been maintaining.

Q. Now, you state that the river had moved westerly. Did you ever go to the other bank of the river and see how far it had moved, northerly, I meant to say? You state that the river moved north?

A. Yes, I have, on several occasions.

Q. And how far did the bank, the northerly bank of the stream move in a northerly direction?

A. Well, I couldn't gage that in round figures. I would say probably 30 or 40 feet. I had an occasion to be over there in '46 with Colonel Huett, of the Engineers. We were studying bank revetment at the time, and we figured at that time, it was roughly 40 or 50 feet, the cut in there. It was cutting at that time.

Q. Did you ever stake out the land back of your Lot 6, Block 4? A. No, we never did. [76]

(Testimony of A. H. Nordale.)

Q. Did you ever file any location notice?

A. Well, we figured we had a location on it because the building—the Vachon property extended beyond the line when we purchased it.

Q. But Vachon only deeded to you this Lot 6 of Block 4, did he not?

A. According to his description he deeded us land beyond the original meander line. To the Chena River.

Q. But that exhibit, though, says what is known as Lot 6 of Block 4?

A. It was still known by that description, that is true.

Q. Of the Fairbanks—that is Lot 6 of Block 4 of the Fairbanks Townsite, is that right?

A. That is true.

Q. And you never did file any location notice, then, on that property? A. No, sir.

Q. Or did you ever make any application to the United States for title to it? A. No, sir.

Q. Now, can you look back and remember about when that brush started to grow on the north part of that land?

A. Yes. Probably about the time we acquired the land, or a little before that. The brush had already started to grow in there by the time we acquired the land. There was [77] a small growth in there, and during the '20's it grew very rapidly.

Q. Now, after that, did any of these floods cover this brush, this small brush with mud?

(Testimony of A. H. Nordale.)

A. Yes, there was flood water around the bases of the brush; yes. I have seen the brush in flood water.

Q. Now, also, you stated that the Fairbanks Laundry had a pipe line for syphoning water out of the river. When you first noticed that, how far from the back end of the building did that pipe extend to pick up water?

A. Well, Mr. Taylor, I suppose the first time I saw it, it was only a very short distance. It may not have been over ten feet or so beyond the building. Ten or fifteen feet. They were taking it out of the eddy, and they extended it, extended it on several occasions.

Q. Was there lumbering operations going on there at the time they had that? A. No.

Q. That pipe in there? A. No.

Q. Was that after the saw mill ceased work?

A. After the Vachon and Sterling building was constructed.

Q. Now, this morning, Mr. Johnson asked you some questions as to the relative height above the river of different parts of this land. Would you state how much higher Lacey Street [78] is than the land which is in controversy here, the land near Birklid and Waxberg's shop?

A. I think Lacey Street extends right down to their level, or below it.

Q. Pardon me, I made a mistake. I meant First Avenue, the intersection there?

(Testimony of A. H. Nordale.)

A. How far it is above their building?

Q. Yes, which is higher, whether Lacey at First, the intersection—how much higher than the lot where Waxberg and Birklid have their building?

A. Well, I made a rough estimate this morning of approximately ten feet. I haven't measured it. I haven't paid any strict attention to that matter of elevation.

Q. You were down there this morning?

A. No.

Q. What? A. No.

Q. Did I understand you?

A. I gave that testimony this morning.

Q. That was a rough estimate from memory?

A. That is right. I don't recall having seen their building since last year.

Q. Now, isn't it a fact that under the back end of your building there is a considerable part of that lot which is lower than the part that Birklid and Waxberg have their building [79] on?

A. There is a small depression in there, just about at the edge of the building. From what I could observe in past years, as this silted in, the river created somewhat of a breakwater. The silt built up; at certain stages of the water the silt would be deposited and it grew and grew more along the outer edge than it did right at the building, where the fewer high stages of water occurred.

Q. But the water would get in there, would it not?

(Testimony of A. H. Nordale.)

A. Oh, yes, in those high stages it came in, yes, but when the accretion reached about the general level of the river, this embankment began to build along the outside and it grew a little faster. The alluvial deposit was a little faster to the north than it was in back. It formed a protection there.

Q. Well, isn't it a fact, Mr. Nordale, that for many years those little gullies that you testified came into the right of Lacey Street and the little depression that came into Lacey Street, wasn't that used to dump all debris, boxes and ordinary refuse that you would have around the stores, things?

A. Never to my knowledge. The Ordinances of the Town of Fairbanks, during those years, were pretty strictly observed so far as refuse was concerned. It was against municipal law to dump in that area.

Q. Now, Mr. Nordale, you testified as to the reasonable rental [80] of the ground where Birklid and Waxberg have their building, I think you testified that you were getting \$185.00 a month for two buildings?

A. Well, it is one building, split in two sections. That price covers the rental of 1, 2, 3, 4 tenants.

Q. And the one of those buildings is about 125 feet long, is it not? A. No.

Q. Very close to it?

A. I don't recall the exact length of that building. I wouldn't know, Mr. Taylor, what the length of that building is.

(Testimony of A. H. Nordale.)

Q. The total rental from the four tenants, then, is \$185.00?

A. That is correct. I have been trying to discourage rent of it so that it can be demolished.

Q. Now, calling your attention to your testimony this morning, you said \$150.00 would be a fair rental for it, just the ground that Mr. Birklid and Waxberg was renting. Was that for a month or a year?

A. That would be for a month, Mr. Taylor.

Q. You have four tenants up above that have buildings, would be \$185.00 a month, and then you have a piece of bare ground down below that you would charge \$150.00 for? A. That is true.

Q. If you set the standard of rental of \$185.00 for four buildings, [81] wouldn't that be high according to your own standards?

A. Well, when I arrived at that figure here, I felt there was considerable area involved there, and the fact that Waxberg and Birklid are on that ground and no portion of it is rentable. There could be several buildings on the ground.

Q. That ground has been there for something like 40 years without anybody building there before?

A. We had hopes of building over the whole area, taking in the whole of Lot 6, and we did not want to divide it up or lease it.

Q. Well, you wouldn't base your rental upon hopes, would you, Mr. Nordale?

(Testimony of A. H. Nordale.)

A. Well, the fact that this ground has been occupied might have some bearing on our plans, too.

Q. But to utilize that as you planned, you would necessarily have to tear down the buildings on Lot 6 or Block 4, would you not?

A. We intended to do that years ago. The only reason those buildings stand was the reason Captain Lathrop wanted them when he was building the theater and apartments. Then, when the war came on, the U. S. Engineers and others required locations and talked us out of destroying them.

Q. Now, do you know where the city boundary line is, where it crosses Lot 6 of Block 4?

A. City boundary line? [82]

Q. Yes, the City boundary, city limits?

A. The city limits would include the accreted area and would be the river bank, so far as I know.

Q. I call your attention to Plaintiffs' Exhibit "F". Now, this plat of 1909, you heard Mr. Linck testify that the dotted line is the city limits?

Mr. Johnson: If the Court please, I don't think that is quite an accurate statement of the testimony, because Mr. Linck merely gave his opinion. He said the symbols indicated that. He didn't say, positively. He wasn't asked positively.

The Court: Objection overruled.

Q. You may answer it.

A. This line (indicating)?

Q. Yes, the dotted line?

A. Well, that is beyond my knowledge. I can't

(Testimony of A. H. Nordale.)

swear to that. That dotted line doesn't mean anything to me, so far as symbols is concerned.

Q. Well, if the plat that has been introduced in evidence here shows that Lot 6 of Block 4 to be 72.83 feet in depth, now that would take the lot down to there (indicating). That is the mark and also, as Mr. Linck testified, that is the city limits. That line. What would be the black line? Would that not be the bank line of the river at that time?

A. I wouldn't know, Mr. Taylor.

Mr. Taylor: May I have just a moment?
(Paused). [83]

Q. Mr. Nordale, what lot was the saw mill located on when Parker and Vachon had it?

A. Parker and Carroll?

Q. Yes, Parker and Carroll?

A. Lot 6 of Block 4.

Q. And how far from Lacey Street was it?

A. I can't tell you. I imagine that Lacey Street ran just about where it does now, and they were up to it, probably up to what would be the sidewalk line now.

Q. That is the First Avenue sidewalk?

A. And Lacey. Lacey. They built Lacey to the edge of the bank there, and I imagine there were a few feet of Lacey extending from the intersection of First North to the meander line and they probably were up to the sidewalk line there.

Q. Do you know whether that mill was located at right angles to the First Avenue line, or was it kind of set on the lot in an angling direction?

(Testimony of A. H. Nordale.)

A. I can't remember, Mr. Taylor, exactly how that was.

Q. Now, calling your attention to that little bite that was in there, do you remember a little bridge across there, with a kind of a hand railing on each side? A. No.

Mr. Taylor: I believe that is all, Mr. Nordale.

Redirect Examination

By Mr. Johnson: [84]

Q. Mr. Nordale, during the time you had this property, and after you acquired it, and when you said it began to grow up with brush, that was back about the time your father first acquired it, is that correct? A. That is true.

Q. And all of that time you kept that portion of the property clean and free from refuse and rubbish, did you not?

A. So far as we could; yes.

Q. Now, this bridge Mr. Taylor has just asked you about, isn't it a fact that bridge he is talking about is farther up-stream?

A. I believe so, Mr. Johnson. I believe that probably was the bridge that crossed the little slough that was upstream between the Parker and Carroll mill, and the mill—there was a saw mill due East of the Parker-Carroll mill.

Q. How far upstream was that other saw mill?

A. Well, it probably would have been on what is now the playground.

Q. And there was a little foot bridge?

(Testimony of A. H. Nordale.)

A. There was a little slough up there with a foot bridge that went across it.

Q. But there was no foot bridge on your property?

A. I can't recall where it went across to. I can't recall anything like that.

Mr. Johnson: That is all. [85]

Mr. Taylor: That is all.

(Whereupon, Mr. A. H. Nordale was excused as a witness and left the witness stand.)

Mr. Johnson: May we have a short recess, your Honor?

The Court: Recess until a quarter past.

(Whereupon, Court was recessed for ten minutes.)

The Court: Counsel ready to proceed?

Mr. Johnson: We are ready.

Mr. Taylor: Defendant is ready.

The Court: Very well.

Mr. Johnson: If the Court please, at this time I should like to introduce the deposition of Fred Parker, Sr., which was taken under stipulation some time ago. I believe the original deposition is in the file, or I could read from a copy. Which would you prefer?

The Court: You might as well take the original.

Mr. Johnson: Mr. Taylor, would you waive reading of the commission to take the deposition, and the stipulation?

Mr. Taylor: We will waive, your Honor.

The Court: Very well.

(Whereupon, the deposition of Fred Parker, Sr., was read as follows:)

"Fred Parker, Sr., being first duly sworn on oath testified as follows:"

DEPOSITION OF FRED PARKER, SR.

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. F. B. Parker.

Q. Are you Fred B. Parker, Sr.? A. Yes.

Q. Do you reside in Fairbanks? A. Yes.

Q. How long have you live in Alaska?

A. Alaska? Since 1897.

Q. How long have you lived in Fairbanks and vicinity? A. Since 1903.

Q. You came to Fairbanks in 1903, is that correct? A. Yes.

Q. Are you familiar with the property known generally as Lot 6 in Block 4 of the Townsite of Fairbanks? A. Yes.

Q. That property is located on the Northwest corner of First Avenue and Lacey Street?

A. Yes.

Q. When did you first become acquainted with that property? A. In May, 1903.

Q. Did you acquire the property at that time? A. Yes.

(Deposition of Fred Parker, Sr.)

Q. In company with someone else? [87]

A. Yes.

Q. Who was that? A. Charles Carroll.

Q. Did you and Mr. Carroll purchase that property at that time? A. We did.

Q. What, if anything, did you do with the property after you purchased it?

A. We erected a sawmill on it.

Q. Was that sawmill erected on the whole lot? Did it occupy one whole piece of property, or do you remember?

A. We occupied the east side of the lot.

Q. Right up to the line along Lacey Street?

A. Yes.

Q. Do you remember how deep the lot was at that time—that is from First Avenue to the river, approximately? Do you have any idea?

A. Around 70 feet. About 70 feet.

Q. Did the lot run all the way to the river?

A. To the meander line of the river.

Q. Did it when you purchased it? A. Yes.

Q. How long after you purchased this lot did you continue to occupy it with your sawmill?

A. To the best of my recollection it was 1906.

Q. From 1903 until 1906 you operated this sawmill on that lot, [88] is that right? A. Yes.

Q. What, if anything, did you do with that lot after 1906, or during 1906?

A. We rented it to Vachon and Sterling.

Q. Did you discontinue operating the sawmill?

(Deposition of Fred Parker, Sr.)

A. Yes.

Q. Did you remove the sawmill from that lot before you rented it?

A. No, the Tanana Lumber Company did.

Q. I see. The sawmill was subsequently sold to the Tanana Lumber Company?

A. The three mills amalgamated and formed the Tanana Lumber Company.

Q. After the three sawmills were joined together, or amalgamated, you say that the one you operated on Lot 6 was removed from Lot 6?

A. Yes.

Q. After the sawmill was removed during the year 1906, I think you said, then you leased this lot to Vachon and Sterling? A. Yes.

Q. Is that correct? A. Yes.

Q. Carroll and Parker—you and your partner, Mr. Carroll? A. Yes. [89]

Q. Now, after you leased this lot to Vachon and Sterling, did they take possession of the lot?

A. Yes.

Q. And what, if anything, did they do with reference to building on it that you know of?

A. They erected a building.

Q. What type of building was it, do you remember?

A. Well, it was kind of a rough building, corrugated iron, two by four frame. I believe they had it insulated because they stayed in it in the winter. I didn't pay much attention.

(Deposition of Fred Parker, Sr.)

Q. Do you know whether or not that building which they erected is still on the premises?

A. I think part of it is. The front part of the building is the building which they originally erected; in fact, they might have built all of it.

Q. Now, Mr. Parker, I want you to look at a photograph which we will mark Plaintiffs' Identification 1, which presumably was taken in 1905, and I will ask you to examine that photograph and if you recognize the subject matter or the picture. Do you recognize that picture? A. Yes, I do.

Q. Can you tell what it purports to represent?

A. Well, it's the waterfront of Fairbanks from the Northern Commercial Company store up to, and beyond the old sawmill. [90]

Q. And what side of the river was it taken from?

A. It was taken from the north side of the river.

Q. Looking south?

A. Looking south. It shows the south side.

Q. Does that picture represent the condition of the water front in the year 1905?

A. Yes, it does.

Q. During that year, were you and Mr. Carroll still operating your sawmill? A. We were.

Q. Was your sawmill located on Lot 6 of Block 4? A. Yes.

Q. Does that picture show your sawmill?

A. It does.

(Deposition of Fred Parker, Sr.)

Q. Can you indicate with a pencil where it is, by placing a mark on it?

A. By placing a mark on it?

Q. Yes, just place a mark underneath where it is.

A. There's the sawmill right there (indicating). Doesn't give much of a mark.

Mr. Taylor: Let me see. Maybe we don't have to have much of a mark on it. (Mr. Parker indicated mill to Mr. Taylor and Mr. Taylor gave him a pen with which to place the mark indicating the location of the mill.) [91]

Q. The sawmill appears in that picture to be near the left-hand border of the picture; is that correct? A. Yes.

Q. The "X" which you have marked on this photograph shows the sawmill?

A. It shows the roof of the mill, yes.

Q. What is the tall object in the front?

A. That is the smokestack.

Q. The smokestack belonged to your sawmill?

A. Yes.

Q. Back of the mill, as indicated, is a structure which seems to—or extends down the bank into the water. Can you tell what that is?

A. That is the sawmill slip where we pulled logs up.

Q. In back, or at the—along the river bank below the sawmill slip, can you tell what that consisted of, as far as the river is concerned?

A. I don't just catch your question now.

(Deposition of Fred Parker, Sr.)

Q. Did you have a millpond back of the mill?

A. Right at the foot of the mill slip was the millpond. There was a big eddy.

Q. And at that time, by reason of that eddy, you were able to use that portion of the river for your millpond?

A. That's what caused us to build there—that ideal eddy.

Q. Did you observe any action of the river on this millpond [92] during time that you operated your sawmill there? A. We did.

Q. Will you explain what this was?

A. Well, each year the silt kept coming in there and we couldn't hold as many logs as we could the first year.

Q. That silt came in and was deposited by the natural action of the river? A. Yes sir.

Q. Did you or Mr. Carroll, or anyone else, for that matter, ever dump any dirt or refuse in that millpond? A. No, sir.

Q. Was there a slough in front of the mill on First Avenue that you filled in? A. Yes.

Q. That was filled in while you had your sawmill there, was it? A. Yes.

Q. Was that done for the purpose of building up a road or street? A. Yes.

Q. After 1906, did you continue to live in Fairbanks or did you move out somewhere?

A. We moved out on Fairbanks Creek.

(Deposition of Fred Parker, Sr.)

Q. How long did you live out on Fairbanks Creek?

A. I believe it was three years. Two or three years. [93]

Q. During that time did you have occasion to come into Fairbanks? A. Occasionally.

Q. Did you make any observation of the old mill site or the river during those years?

A. I would just glance at it.

Q. Did you see any change in the meander line or the bank of the river? Did you notice any such change?

A. I noticed it was filling in with silt and the pond was practically gone.

Q. When did you come back to Fairbanks to live, 3 or 4 years was it?

A. Something like that—two or 3 years.

Q. That would be about 1909 or '10?

A. If I remember rightly, I went into the automobile business in 1908.

Q. And at that time you were back in Fairbanks?

A. Yes.

Q. And you continued to live in Fairbanks ever since, most of the time?

A. Well, no. We moved to Ester Creek. I ran a stage line from Ester Creek to the old Tanana Siding. I was there for a year or two.

Q. But that was in Fairbanks vicinity, or in the vicinity of Fairbanks? [94] A. Yes.

Q. Since 1906, down to the present, have you

(Deposition of Fred Parker, Sr.)

observed, from time to time, the action of the river behind this particular piece of property?

A. Well, I didn't observe it much until 1921. I was in town more then and walking around where I could observe.

Q. Where were you employed in 1921?

A. I was in the Marshal's Office.

Q. How long were you in the Marshal's Office?

A. Twelve and a half years.

Q. I'll show you a photograph which we will call Plaintiffs' Identification 2 which was purportedly taken in 1915 and I'll ask you if you recognize the subject matter of that photograph?

A. Yes, I recognize it.

Q. Will you tell what it is?

A. Well, let's see. That's where the sawmill was (indicating.)

Q. Does this whole picture itself represent generally the Town of Fairbanks and the water front along First Avenue? A. Yes.

Q. Can you indicate with a pencil where the old—where your sawmill was formerly located?

A. Do you want me to use the pen again?

Mr. Taylor: I think it would be well to establish [95] when that picture was taken. Do you know when that picture was taken?

A. I don't know. The date here in October. . . .

Q. What date is that?

A. It was October, 1915.

Q. Does that represent the situation as it was

(Deposition of Fred Parker, Sr.)

in 1915? Do you know, is that about the way it looked?

A. Yes, that's about the way it looked.

Q. You were here in 1915? A. Yes.

Q. Can you tell the approximate location of the sawmill?

A. It was right where that building is (indicating).

Q. This "X" marks the approximate location of your sawmill? A. Yes.

Q. Now, the rear end of the building which you have marked with an "X" was—is that considerably further toward the river than where your saw mill was? A. Do you mean to the water's edge?

Q. Yes. A. Yes, it is.

Q. Do you recognize this, what looks like a line, or a pipeline of some sort; do you recognize that?

A. That wasn't there—no, I don't recognize it.

Q. It probably was there when this picture was taken. A. Oh, yes. [96]

Q. You may or may not have seen it?

A. I don't recollect.

Q. The waterline as shown in this picture is considerably below where it was at the time you had your sawmill there? A. Yes, it is.

Q. And this picture indicates a beach, or bank, along the river which wasn't there when you had your sawmill, is that correct?

A. That's right.

(Deposition of Fred Parker, Sr.)

Q. Do you know how that beach, or bank, came to be there?

A. Well, it's silt constantly coming down the river and building it up.

Q. Was any of that bank built up by artificial means? A. Not that I know of.

Q. I will show you a document which we will identify as Plaintiffs' Identification 3. I will ask you if you have had occasion to look at it before?

A. I saw it today for the first time.

Q. Can you tell briefly what it is, or what it purports to be?

A. Well, it shows First Avenue and Lacey Street and Block 6 where the sawmill originally was.

Q. Lot 6? A. Yes.

Q. In other words, it is a plat of the original Lot 6 of Block 4; is that right? [97]

A. Yes, that's right.

Q. And the heavy line marked "A" and "B" on that plat—does that indicate the original meander line of the Chena River at the time you had your mill there, or do you know?

A. Well, I know that the lot where the sawmill was was about some 70-odd feet deep, and, of course, I don't know anything about the survey.

Q. And at that time it ran right down to the river? A. Yes.

Mr. Johnson: You may cross-examine."

(Whereupon, Mr. Taylor read the Cross-Examination of Mr. Parker, as follows:)

(Deposition of Fred Parker, Sr.)

Cross-Examination

By Mr. Taylor:

"Q. Who did you acquire Lot 6 of Block 4 from, Mr. Parker?

A. From Steel, Smith and Stewart.

Q. And had the Townsite been surveyed at that time, Mr. Parker?

A. Well, sir, I couldn't tell you.

Q. Do you know whether the Townsite Trustee had, by that time, issued deeds to the claimants of lots in Fairbanks?

A. No, I don't. All I know is that they showed us where the corners were.

Q. Did you acquire any other property in the immediate vicinity of the lot in question?

A. Now, we had a lumber yard on the other side where Wells [98] Alaska Motors is. We didn't buy it; we might have leased it. We used it as a lumber yard.

Q. Was there a street between the lumber yard—a roadway? A. Yes.

Q. Isn't it a fact, Mr. Parker, that there was a small stream running down past the mill and into the Chena Slough?

A. Not that I remember.

Q. A little gully alongside your lot?

A. There was a blind slough. Evidently the river had been in that far, but it was choked up above, and that caused a blind slough. But it was dry—

(Deposition of Fred Parker, Sr.)

perfectly dry. There was no water in it that I recollect. That was First Avenue.

Q. How wide was the lot, Mr. Parker, do you remember?

A. I don't just recollect, now, but we had an office at one side of it. I imagine seventy, eighty—maybe a hundred feet; I don't remember.

Q. It was considerably wider then than this plat which was exhibited to you as Plaintiffs' Identification 3? A. It was considerably wider.

Q. Did you ever acquire a Townsite's Trustee Deed to that lot? A. I don't remember.

Q. Now, you operated the sawmill there for approximately three years, is that right?

A. Yes.

Q. What did you do with your slabs and sawdust? [99]

A. Well, they would take the slabs away as fast as we could make them. The sawdust—we put a lot in the streets. They were after sawdust for banking houses and filling walls. There was a demand for both sawdust and slabs.

Q. Now, you say, Mr. Parker, that your lot ran from First Avenue back to the river—to the river bank? A. To the river bank? Yes.

Q. Now calling your attention to Plaintiffs' Identification 1, you noted that this picture was taken on June 15, 1905. Do you think that that would be the approximate date that was taken?

A. Yes. I think that would be right.

(Deposition of Fred Parker, Sr.)

Q. Also, I call your attention to Plaintiffs' Identification 2; you say that date on there is October, 1915. Now, Mr. Parker, did you notice the condition of the river during the several years that you were there running the sawmill?

A. Yes, I noticed it the three years that we were there.

Q. And you would notice the rise and fall of the river according to the seasons? A. Yes.

Q. Isn't it a fact, Mr. Parker, that this picture taken in June, 1905, would naturally show the river much higher than one taken in October?

A. Yes.

Q. There would be a great difference in the height of the [100] water, would there not?

A. I am looking here at the water level. That bank was right straight down from where the mill slip was. We had to put in pilings at the end of the mill slip. You can see where the dead water—you can see the line of the dead water. It was deep just at the bank. We had to put in pilings. The end of the slip was way down below the low water mark so that we could get logs up to the mill at all seasons.

Q. I call your attention to the Exhibit 1—isn't this sawdust in here, (indicating) Mr. Parker?

A. I don't think it is. We were warned not to put sawdust in the river. We were warned not to put sawdust in the river on account of the fish. We knew better than to do that anyway.

Q. What would that indicate, Mr. Parker?

(Deposition of Fred Parker, Sr.)

A. I would have to have a magnifying glass to do that. I couldn't tell you. It looks like the end of Lacey Street. It's light color.

Q. It is light color or something, isn't it?

A. Yes, sir.

Q. Now, isn't it a fact, Mr. Parker, that in June this river would be much higher than it is in—just before freeze-up, October 15th—that in June this river would be way up here (indicating)? [101]

A. Of course, the water rising and lowering makes a big difference. When this first picture was taken, that is Exhibit 1, that was a cut bank here and since then that cut bank has filled in.

Q. Isn't it a fact that a lot of that fill has been made by dumping debris—old stoves, beds and things like that—in it?

A. Not to my knowledge. It's against the law to do that.

Q. Did you mark the mill on this particular exhibit? The mill would come out to Lacey Street?

A. I know it was right in there, east of the mark where the slip was.

Q. Do you know what that building was, Mr. Parker?

A. Well, I think that's the Vachon Building.

Q. Vachon and Sterling put a building on that property? A. Yes.

Q. Did you ever know of any large fires occurring later in this particular part of town?

A. Yes, three or four large fires.

(Deposition of Fred Parker, Sr.)

Q. And you remember the debris of one large fire in this area here that was dumped in that little slough, or eddy, where you used to keep your logs?

A. No, I don't remember. It was our log pond.

Q. It ceased to be a log pond then. A number of years after that, it could have been done and you not know about it? [102]

A. Yes, it could have.

Q. When did you sell that lot, Mr. Parker?

A. Well, I don't remember. We rented it first, and I think the records would be the best evidence of when we sold it.

Q. Did you sell it to Vachon and Sterling?

A. Yes.

Q. And you don't remember, at that time, whether you had received a Trustee's deed or not?

A. I don't remember a thing about the deeds.

Q. Do you know when the Nordale Estate acquired title to that property? A. No, I don't.

Q. Calling your attention to Plaintiffs' Identification 3, does that plat indicate the city boundary—the boundary of the City of Fairbanks?

A. Well, I'd say that this part did (indicating heavy line marked "A" and "B"). From the position of First Avenue, I'd say that from "A" to where the sawmill is—was, and possibly up to here, up to the next angle.

Q. Now, other than that, everything below that line would be in the city limits, and everything above it would be outside the city limits?

(Deposition of Fred Parker, Sr.)

A. At that time, yes.

Q. Let's see what date this is—April 29, 1948. At the time when you had the lot, this (indicating heavy line marked [103] "A" and "B") was the city limits?

A. Yes. The north boundary was the bank of the river.

Mr. Taylor: That's all."

(Whereupon, Mr. Johnson read the Redirect Examination as follows:)

Redirect Examination

By Mr. Johnson:

"Q. Mr. Taylor indicated line "A" and "B"—you indicated line "A" and "B" as being the old boundary line? A. Yes.

Q. Mr. Parker, with reference to Identification 1—Mr. Taylor asked you what this light colored area was, next to the sawmill slip and he asked you if that were sawdust. I believe that you said you didn't think so? A. Yes.

Q. That light colored area could be sand or silt, could it not? A. It could be, yes.

Q. In other words, the type of soil in Fairbanks, and particularly along the river is a light colored, sandy loam, isn't it?

A. Well, I see light color down here, underneath the Senate Saloon.

Q. I mean the color of the streets around Fairbanks, right now, is very light in color, when it's dry.

A. Yes, that's true. Mr. Taylor called my at-

(Deposition of Fred Parker, Sr.)

tention to [104] this light spot—this might be grass; if you had a magnifying glass. . . .

Q. But you do not believe that it was sawdust?

A. It does appear to look as if something had been dumped in there; I don't know. It might be. At the same time, we didn't allow anything to go into that eddy; that is what we put the sawmill there for, that millpond.

Mr. Taylor: If that was grass, in June it wouldn't be that color, would it?

A. I don't know. It would be more likely to be green and wouldn't show up in the film.

Q. During this period when you operated the sawmill, did the Chena River rise and fall more than once during the year? A. Yes, it did.

Q. Did you have high water in the spring?

A. Generally when the ice went out, it would raise up, bank full.

Q. And then did the river rise again later?

A. As a rule, that temporary bridge we generally had to put in twice a year.

Q. When did that happen?

A. When the ice went down, and receded we put up the first bridge; and in July, when the rains came, we generally lost the bridge the second time.

Q. Then you had a high water period in May, perhaps, or sometime [105] along there?

A. After the ice went out, yes.

Q. And then again, later in the summer?

(Deposition of Fred Parker, Sr.)

A. Yes. I know, because we had to furnish the lumber for that bridge."

(Whereupon, the Recross Examination was read by Mr. Taylor, as follows:)

Recross Examination

By Mr. Taylor:

"Q. Did you ever have high water as late as October, do you recall?

A. Yes, in October. Sometimes we have had high water in September.

Q. Plaintiffs' Identification 2 shows real low water in October, doesn't it?

A. The water is generally low in September, October.

Mr. Taylor: That's all."

Mr. Johnson: Will you waive the reading of the certificate?

Mr. Taylor: Yes, we will so waive.

Mr. Johnson: I would like to have this introduced in evidence.

The Court: It is not introduceable.

Mr. Johnson: Very well. I would like, now, to offer Plaintiffs' Identifications "1" and "2", which have been referred [106] to in the deposition.

Mr. Taylor: If the Court please, I can see no reason why they are introducing these. Object upon the ground they are indistinct and I don't believe it would add anything to the case. I am not particularly—they might be more misleading than the actual verbal testimony.

(Deposition of Fred Parker, Sr.)

Mr. Johnson: Well, if the Court please, counsel identified both the exhibits in his cross-examination of the witness, Fred Parker, Sr. There are marks, indicating the location of the property and the mill, which were placed on the Identifications at the time the deposition was taken, your Honor, placed on there by Mr. Parker, with Mr. Taylor's pen, I might add.

The Court: Well, I will admit Identification Number "1". I think the other is too vague and indistinct.

Clerk of Court: Identification "1" is Plaintiffs' Exhibit "H".

(Plaintiffs' Identification "1" admitted in evidence as Plaintiffs' Exhibit "H".)

Mr. Johnson: Mr. Adolph Wehner.

ADOLPH WEHNER

(Adolph Wehner, called as a witness on behalf of the Plaintiffs, was duly sworn and testified as follows:)

Direct Examination

By Mr. Johnson:

Q. What is your name, please?

A. Adolph Wehner.

Q. Can you hear me all right, Mr. Wehner?

A. Well, I am bad on hearing. I can't hear very good unless it is very loud and slow.

Q. Well, perhaps I can stand over here a little closer. Where do you live, Mr. Wehner?

(Testimony of Adolph Wehner.)

A. I live on Third Avenue.

Q. In Fairbanks? A. Yes sir.

Q. How long have you lived in Alaska?

A. Oh, I lived in Alaska since 1905. I came to Dawson in '87.

Q. Well, you have lived in Alaska since 1905, you say? A. Yes.

Q. And how long have you lived in Fairbanks?

A. Ever since.

Q. You have lived here all of the time, is that right? A. Yes.

Q. When you first came to Fairbanks do you remember a sawmill down on the corner of First Avenue and Lacey Street, that was operated by Carroll and Parker? A. I know it very well.

Q. Have you seen it a number of times? [108]

A. Oh, yes, pretty nearly every week.

Q. Are you acquainted with that property?

A. I do.

Q. Can you tell where the sawmill was located, about? Can you describe how it was sitting on that property?

A. The property was located right there on Lacey Street there.

Q. Well, was it near the East side of the lot, right along Lacey Street? A. Yes.

Q. Now, at the time that you first became acquainted with that saw mill, how deep was the lot? I mean, did the saw mill run clear back to the river?

A. Yes. The river at that time had a kind of

(Testimony of Adolph Wehner.)

an "S" shape, came from Garden Island, or Slaterville, over and turned—it was a right kind of a turn—and turned into that corner lot where Vachan—or where Mr. Nordale was. The skid was going up that way.

Q. Right up out of the water—the skid went right up out of the water? A. Yes.

Q. Now, have you—oh, strike that out. When did they move the saw mill off of that lot, if you remember?

A. Well, it was—I think it was a couple of years later, or a year later, if I recollect, but it was some time later [109] they moved it off, and I noticed that Fred Norris built a saw mill across there on what they called Dead Man's Slough.

Q. They moved this mill over there, is that it?

A. Right.

Q. Now, while Carroll and Parker were operating this saw mill on this lot, did you ever see them dump any sawdust or slabs into the river?

A. That I don't know, exactly, but the sawdust pile is right on the children's playground now. There was a sawdust pile underneath there, and I cleaned the children's playground last year or the year before—I got to clean it every year for the City, and the sawdust is piled there.

Q. Well, that wasn't in the river, though, was it?

A. No, no; that wasn't in the river though. That was back on the far end of the saw mill at that time.

(Testimony of Adolph Wehner.)

Q. And that was out of the river?

A. Oh, yes.

Q. And that was off of this lot? A. Yes.

Q. That the saw mill was on. Now, have you noticed, or have you observed that property from time to time since they moved the saw mill off there?

A. Yes, sir. It will be a year back, the City put in the drain from 11th Avenue down Lacey Street, all the way down, and that was the outlet of it and since that sewer got in, [110] it busted that drain all to pieces, and they have to put the drain in the sewer, but the only drain was left there, and goes in that drain right on the outlet from Second Avenue. You see, that runs on there. Well, last Spring I noticed when I was working there, that they had a fill in that ditch.

Q. Who had filled it in?

A. Well, I don't know. The people what built there.

Q. Waxberg and Birklid, you mean?

A. I don't know who they were, but I told them at the time, "You are going to be in trouble if you blockade this drain here, because that belongs to the City."

Q. Now, the city maintained that drain?

A. Maintained that for years.

Q. Did they have the permission of the Nordale Estate to put the drain in across that line?

Mr. Taylor: Just a moment, I will object to

(Testimony of Adolph Wehner.)

it on the ground no testimony no drain put across the lot. His testimony was a drain across Lacey Street.

Q. Where did that drain go, on Lot 6, of the Nordale property?

A. I don't know exactly where it goes on the property, but pretty close, anyhow, onto the property. I know when we surveyed last Spring, and Mr. Kelsey, the Manager of the City, says "Well, you are going across that property with the ditch." From this side to the hospital. [111]

Q. All right. Now, what I am trying to get at, is, Adolph, after Carroll and Parker removed the saw mill, did that lot start to fill in, or did the river start to move over?

A. Yes, the river changed pretty near altogether, and it put all the silt in there. If I recollect, there is a kind of a high bank on this side.

Q. What do you mean by "this side"?

A. Oh, this side on the property. That all filled in.

Q. Right in back of where the old saw mill used to be, that is what you mean?

A. Yes, on the side of it.

Q. That is right, and that began to fill in, did it?

A. It filled in right along. In fact, several years I had to go take the men and dig out that ditch again. It filled on the lower end with silt, and I had to dig it out and throw it over. Of course, I wasn't particular, if I throwed it on the lot it

(Testimony of Adolph Wehner.)

didn't bother me any, so long as I got it out of the way.

Q. And all of that left bank of the Chena began to fill up and the Chena moved to the North, did it, to the other bank?

A. It cut away on the other side where the hospital is, and it filled up on this side.

Q. That is right, and that has been going on slowly ever since?

A. Ever since I can remember.

Q. Ever since they moved that sawmill? [112]

A. Yes.

Q. And that has been gradually building up, is that right?

A. I will give you an illustration on the lower end of town. On Block 25, that used to be a full block, and now the river got three-quarters of the block now. It has gone away. In fact, the old channel is half-way across the river.

Q. That is just the opposite of what this is?

A. Well, no, the same thing, except cut in on this side and filled in on the other.

Q. Do you know of anybody ever dumping any refuse or anything else back of the Nordale property?

A. Yes, they dumped lots of that, because I was detailed from the City to work and clean that up, and cut all the brush out of there.

Q. Well, now, I mean, this building up that was going on, was that caused by the action of the

(Testimony of Adolph Wehner.)

river, or was it caused by somebody dumping stuff there?

A. Well, the river helped a lot, but they dropped a lot of tin cans and stuff thrown in there, too, and in flood time it was covered over.

Q. That was all cleaned out. You cleaned that out?

A. I cleaned most of that out, you know.

Q. So that the property that is now back of the building—the old Nordale Hotel—has been built up gradually by the action [113] of the river?

A. Yes, sir.

Mr. Johnson: Cross-examine.

Cross-Examination

By Mr. Taylor:

Q. How long have you been with the City, Mr. Wehner?

A. Well, I have been ever since the Town started.

Q. Were you working for them in 1905 and 1906?

A. I have been working with Joe O'Connor, making drains—the first drains of the City's, off the lower end, South of the Nordale.

Q. You know where those drains are located that go by that lot? A. Yes, sir.

Q. Isn't it a fact they go right down Lacey Street?

A. That drain Gilsher put in, he put that drain

(Testimony of Adolph Wehner.)

from 11th Avenue, a box drain, all the way to—
into the drain on Lacey Street.

Q. That drain is abandoned?

A. Oh, no, that drain is not abandoned, and that drains Second Avenue, and it drains some of the others that is connected on it yet. That drain is below the N. C. tunnel. The tunnel—where they put that tunnel they never touched that thing, because that drain is about fifteen or twenty feet deep.

Q. Where does it empty now? [114]

A. It empties near where Nordale's house is going into the river.

Q. It goes on beyond, past the building?

A. It keeps filling in, you know.

Q. When you was cleaning up the streets the other day, didn't you dump some debris down there?

A. I did.

Q. Have you dumped there before?

A. Oh, yes, lots of times.

Q. And isn't it a fact, you say there was a depression in there—kind of a slough—a dry slough—over towards the ball grounds?

A. There was a slough. A small slough, but I noticed that from Wendell Avenue all that water there is now, we cut another ditch there. In front of that Army cabin there.

Q. Prophylactic Station? A. Yes.

Q. Well, now, isn't it a fact that a lot of debris was dumped into that eddy, you might say,

(Testimony of Adolph Wehner.)

or a bite, that went in there by the old slip, after the mill was moved out and a lot of people dumped?

A. Not that I noticed since I was here. It practically started filling in from the high water forming silts and especially I noticed the last couple of years, since the F. E. started on Fifth Street, at the lower end of Fairbanks, [115] there is an awful lot of silts coming down every year. In fact, over at the brewery, you can see the silt since we started the brewery. We filled it inside from the river bank, and that filled in three feet higher.

Q. On that lot?

A. On that lot; yes.

Q. Now, when was the year you cut the trees down? A. Oh, a couple of years ago.

Q. 1945?

A. 1945; '44. I didn't keep track of that. All the brush there.

Q. There was some pretty fair size brush there?

A. No, it was all willows.

Q. No elders?

A. Maybe some cottonwoods.

Q. Cottonwoods?

A. Maybe some cottonwoods?

Q. Isn't there some trees on the river now that is two or three inches through?

A. What is that?

Q. Did you notice recently some trees along the river bank on that property, two or three inches thick? A. No.

(Testimony of Adolph Wehner.)

Q. You didn't see them? You been working there lately?

A. Yes, I have been there quite often. Go there pretty [116] nearly every week for that matter.

Q. You say you went there in 1945 and you cut some brush off the far end of that property we are having a dispute over?

A. I hauled all the brush—I got orders to haul all the brush away into piles, and all the rubbish.

Q. Now, was that old slough in there, or bite, or eddy, whatever you call it—was that all filled in?

A. It was filled in long ago.

Q. And when you went down there at that time, how high was that above the ordinary water level of the river?

A. Well, you see, the play ground——

Q. You don't know? A. No.

Q. How high was that?

A. You go down and look at it and you see the level of that. I tell the Court, that has been filling in ever since 1905—ever since the saw mill was taken away from there and the river took a different channel altogether. In fact, back of the Nordale Hotel you couldn't walk on the beach there years ago. You couldn't walk there. That was all filled in since that. They had pile drove in there in back of the Nordale at that time, just the same as the Fairview Hotel has got now. That has all been filled in.

Q. Now, you say there was a dry slough come

(Testimony of Adolph Wehner.)

over from the play ground. Now, what was that filled in with? [117]

A. The play ground? That wasn't such a slough that I noticed. It was a kind of a ditch, like.

Q. Well, what was it filled up with?

A. Well, the City went to work and filled up and graveled Wendell Avenue every year pretty near.

Q. Now, when you went and cleaned up the lot—the lower end of that property that is in dispute here—you say there was tin cans around there?

A. Sure, there was tin cans and all kinds of rubbish I had to clean up.

Q. What did you do with it, throw it in the river?

A. Put it down on the dump. I hauled it away. That was the orders.

Q. What else was there, besides tin cans?

A. Well, there was toilets, people throwing toilets there. I cleaned that all up. Cleaned the lots clean by orders from the head man.

Q. But when you went down there this lot, where Mr. Waxberg and Birklid's building is now, was that filled up about the same level as it is now?

A. Pretty near.

Q. It is about the same? A. Yes.

Q. And was there grass growing on there, too?

A. Well, hardly. Well, yes, that goose grass looks like [118] Christmas trees. Some of that was there.

Q. And now, how much lower is that land where

(Testimony of Adolph Wehner.)

Mr. Waxberg and Birklid's building is, than the land where the Nordale building is?

A. Well, when Vachan was there, when I notice first, there was a gradual going down to the river. Gradual grade.

Q. Well, I will ask you another question, maybe you can answer this one. How much higher is the First Avenue at the intersection of Lacey Street,—how much higher is it at the intersection of Lacey and First Avenue than the ground down where the Waxberg and Birklid shop is?

A. I couldn't tell you that, but I imagine the low stage of water in the Chena River, and it is (interrupted).

Q. No, you are not getting me. We are not worrying about the water in the river, we are worrying about how much higher First Avenue is than the ground down where Waxberg's shop is?

A. Well, I judge about ten feet.

Q. Ten feet? Then how much higher is the ground at Waxberg's than the ordinary level of the river?

A. Well, the ordinary level of the river? Well, I judge about fifteen feet. Might be less than that. I don't know. I haven't put the instrument on it yet.

Q. That is just an estimate, is it, Mr. Wehner?

A. I haven't measured it yet. [119]

Q. How often do we have these floods, Mr. Wehner?

(Testimony of Adolph Wehner.)

A. I have seen a couple of dozen, and the biggest was in 1905 in the Summer, when it washed out First Avenue.

Q. And could you tell the Court how much each one of these floods would raise that land there back of the Nordale's?

A. That just depends on how high the flood is, and how much silt drifts along. I would say just about six inches every flood.

Q. Did you go down there last Spring, when we had the big flood, and see how much it had filled in?

A. Well, I noticed that was over four inches on the play ground.

Q. You didn't look down on it?

A. I wasn't interested in anybody's property.

Q. And you think, then, that these floods have raised that lot up there by Waxberg and Birklid's about fifteen feet since 1905?

A. I told you there was a gradual slope going down from Front Street. When we put in that ditch, I know we had to go down quite a bit from the outlet. Waxberg's put the dirt in it. We wanted him (interrupted).

Q. He built that drainage ditch on out?

A. I told him to, or otherwise it would block all the water from Second Avenue.

Q. Well, so the ditch is still in use? He didn't block it?

(Testimony of Adolph Wehner.)

A. Well, if he didn't put the drain in, it would have been. [120]

Q. Well, he did put the drain in?

A. I guess so; I don't know.

Q. Do you know what kind of foundation is the back end of the Nordale building? On Lot 6 of Block 4?

A. I don't know. I haven't ever been underneath there. But they had a shack in back of it. I tore that all down. He wanted that all down. He wanted the fence all taken away. Of course, I charged it up to the property. That was the orders from the City.

Q. You charged it to Mr. Nordale?

A. Well, I don't know who the property belonged to. I just told them in the office I cleaned that up, and whoever it belongs to, you better collect that.

Mr. Taylor: You may take the witness.

Mr. Johnson: That is all.

(Whereupon, Mr. Adolph Wehner was excused as a witness and left the witness stand.)

Mr. Johnson: May we have a short recess?

The Court: Yes. Until 20 after.

(Whereupon, Court was recessed for ten minutes.)

The Court: Counsel ready to proceed?

Mr. Johnson: We are ready, your Honor.

Mr. Taylor: Ready, your Honor.

Mr. Johnson: I would like to call Oscar Engstrom.

OSCAR ENGSTROM

called as a witness [121] on behalf of the plaintiffs, was duly sworn and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. Oscar Engstrom.

Q. And where do you reside, Mr. Engstrom?

A. Well, at the present time at Hot Springs, Alaska.

Q. And how long have you lived in Alaska?

A. I came here in 1904 from Dawson.

Q. In 1904? A. 1904; yes.

Q. Are you acquainted with the property that is involved in this law suit, which is generally known as Lot 6 in Block 4 of the Town of Fairbanks?

A. I was, at one time.

Q. What is that?

A. I was acquainted with it at one time.

Q. Well, when did you first become acquainted with it?

A. The first day I was in Fairbanks I got a job wheeling sawdust at Carroll and Parker saw mill.

Q. The Carroll and Parker saw mill—is that what you are referring to? A. Umhummm.

Q. Where was that located?

A. Well, on the corner of First and Lacey.

(Testimony of Oscar Engstrom.)

Q. On the corner of 1st and Lacey? Was that on this Lot 6, Block 4? A. Yes.

Q. Would that be the Northwest corner of First Avenue and Lacey Street?

A. It would be.

Q. How was the saw mill situated on the lot, do you remember?

A. Yes. The boilers was facing First Avenue and the mill behind the boiler, and the saw rig behind that. The saw and the carriage.

Q. Behind the mill part?

A. Close to the stream.

Q. And what was beyond the saw and carriage, next to the river?

A. That was where they pulled up the logs and lowered them on the carrier.

Q. What kind of a rig did they have for doing that? Was there some sort of a structure that they pulled the logs up on?

A. A skid; chute.

Q. Kind of a chute? A. Yes.

Q. Was that built down into the river at an incline? A. Yes, sir.

Q. And did the mill occupy the whole lot as it then existed, [123] from First Street to the river? That is, I mean all of the whole mill, together?

A. It did.

Q. And you say your job was to haul sawdust?

A. Hauling sawdust.

Q. Where did you wheel it to, from the mill?

(Testimony of Oscar Engstrom.)

A. Mostly on First Avenue, west of the mill. The plots where the U.S.O.—between there and where the U.S.O. would be.

Q. I see. What was the reason for doing that?

A. There was a deep hollow there.

Q. And they were building that up to make a street?

A. They were doing that to level up the street.

Q. Did you ever haul any sawdust or dump any sawdust into the mill pond? A. No.

Q. Do you know whether or not any slabs or anything of that sort were ever dumped into the mill pond?

A. No, I don't. Not while I was there.

Q. How long did you work at the mill?

A. Well, I started sometime—I don't know the dates now, but the latter part of September, and worked to the middle of November, I should say.

Q. That was in the year 1904?

A. Yes, 1904. [124]

Q. And during that time, when you were hauling sawdust away from the mill, it was all dumped into the First Avenue, or what is now known as First Avenue?

A. It was First Avenue, and there was lots of building there, and also stock pile on the street where the teamsters loaded sawdust to haul it all over town. The whole town was building at that time.

Q. And what sawdust you didn't use to dump in

(Testimony of Oscar Engstrom.)

this hole in First Avenue was stockpiled and later sold to people who were building, is that right?

A. Well, the way I think it was that the stock pile had to be there first—a certain amount of sawdust—ready for sale, and the rest of it was dumped into the street to fill up the street. I believe Carroll, the business manager, had a contract with the City to fill up that, and he also sold the rest of the sawdust.

Q. What they didn't use in that hole on First Avenue was sold and hauled away, is that right?

A. That is right.

Q. How long did you stay around Fairbanks after you quit work at the sawmill?

A. Well, I didn't stay very long around Fairbanks. I took in the Bonnifield Stampede.

Q. Well, while you were working at the saw mill, did you notice any action of the river on this mill pond? Did it seem to [125] be filling up, or anything, from silt?

A. No, not at that time. The pond was pretty quiet there. I helped to pull the logs out of the mill pond up to the time it froze up.

Q. And since that time you have been more or less away from Fairbanks proper, isn't that right?

A. Clear up after Christmas. I tink I was out around the Cleary District, possibly.

Q. Have you had any occasion to notice that property since you quit working at the saw mill? I mean, pay any particular attention to it?

(Testimony of Oscar Engstrom.)

A. No, I never really had any occasion, because I never thought of it any more. I stayed in Fairbanks lots of times.

Q. But you haven't paid any particular attention to it since then? A. No.

Mr. Johnson: Cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Engstrom, were you subpoenaed to appear here?

A. I was called here by Mr. Nordale to be here; yes.

Q. Did you go down to the land back of the Nordale building on First Avenue since you knew you were going to testify?

A. No. I haven't been around there. Last time I was going [126] by there it was just about when the dog races was going on. I stayed at the hotel at that time.

Q. That was when the Nordale Hotel was on First Avenue?

A. No. I mean this Spring, the last time. I stayed over on the present Nordale, and walked down Lacey Street and looked at the dog races.

Q. There was considerable snow on that land that time that you wouldn't really get much of an idea as to the change, then?

A. No, I wouldn't.

Q. Was it possible for any of that sawdust that you were dumping into the hole on First Street, the

(Testimony of Oscar Engstrom.)

rains or the surface water wash that into that little bite where the logs used to be—where you would haul the logs up?

A. No, it couldn't, because the pit was laid under the saw and I wheeled it from there and over to and up First and in that way.

Q. That was nothing went into the river that you know of?

A. There was nothing went into the river that I know of.

Q. Now, calling your attention to where they brought the logs up to the slip, wasn't there a little bite come in off of the river; some slack water?

A. (Witness shook his head.)

Q. You just pulled them right out of the river into the slip?

A. Well, there was one man that hooked the tongs, and another pulled them up; yes. That is all. [127]

Q. Isn't it a fact there was a kind of an eddy come into the slip?

A. Yes, there was an eddy there. Didn't take much movement to haul them.

Q. Fairly quiet water in there?

A. Quiet water.

Q. How far did that little bite extend in there from the true bank of the river?

A. Well, it was built on top of the bank of the river and sticking out, more of a slope. The bank was standing just about perpendicular.

(Testimony of Oscar Engstrom.)

Q. I mean, how far did this slack water extend up in towards the saw mill, or past the mill?

A. It must have been a hundred feet or more than we had. Straight out towards the river.

Q. Lacey Street came right down to the water?

A. I assume so. There wasn't much of a street at that time.

Q. But there was a thoroughfare—there was a way to get down there, is that right?

A. Well, I don't think there was anything driving down Lacey Street below First Avenue. And I don't think—I believe, if I recall right, Lacey Street was a lot of stumps at that time.

Q. Was you there when they cleared the stumps off? [128] A. No.

Q. You don't know whether they throwed them in that slough or not?

A. I don't think so. Right there where the mill was, they had some lumber there, I guess, alongside the mill. I don't know if it was on the street, but they didn't have much stock pile. They sold the lumber as fast as it was sawed.

Q. Where did they have the lumber yard there, Oscar?

A. They didn't have much of a lumber yard there, because they sold the lumber.

Q. That they had to take and pile up? Took it away from the mill and took it to pile it up for people to haul away. Where did they take it, on Lacey Street, or on the west side of the mill?

(Testimony of Oscar Engstrom.)

A. Well, on this side of the mill, what you call the west side of the mill, there was a space there between the mill, this way, and that is where the saw pit was and the lumber went straight out. There was some lumber there, and some on the other side.

Q. But the demand was so great you didn't accumulate a great deal of lumber, is that right?

A. No, they didn't.

Mr. Taylor: That is all, Oscar.

Mr. Johnson: That is all.

(Whereupon, Mr. *Adolph Wehner* was excused as a witness [129] and left the witness stand.)

Mr. Johnson: Mr. Preg.

LEO PREG

called as a witness on behalf of the Plaintiffs, was duly sworn and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. Leo Preg.

Q. How do you spell that last name?

A. P-r-e-g.

Q. Where do you live, Mr. Preg?

A. Here in Fairbanks.

Q. Fairbanks, Alaska? A. Yes.

Q. How long have you lived in Fairbanks?

A. Since 1903.

(Testimony of Leo Preg.)

Q. And you have lived in the town continuously since that time, is that right?

A. Most of the time. Sometimes in the summer I go out for a few months.

Q. I mean, this has been your home since 1903?

A. Oh, yes.

Q. Now, in 1903, when you first came here, how soon after that did you become acquainted with Carroll and Parker? [130]

A. Well, I came with them from Dawson.

Q. Oh, you came over with them from Dawson?

A. Yes.

Q. Well, you were working with them at the time they built their saw mill?

A. Yes, I had been working for them a whole year.

Q. And when did they build that saw mill, do you remember?

A. Right away. A week after we landed here. They bought the lot and we moved over from Graehl and started to put the plant up as far as we could go.

Q. Whereabouts was this lot that you speak of?

A. That is the corner of First and Lacey.

Q. What corner would that be?

A. That would be the northwest corner.

Q. Is that the lot that is in question in this case, Lot 6 in Block 4, of the Townsite of Fairbanks?

A. Yes.

(Testimony of Leo Preg.)

Q. After the mill was constructed, what part of the lot did it occupy?

A. It occupied pretty nearly the whole lot.

Q. Well, would that be from north to south?

A. Right from—it was about ten feet from the river bank. The back end.

Q. And clear up to First Avenue? A. Yes.

Q. And about how wide a space on the lot did you use, could you remember?

A. Well, it was right on the line with Lacey Street. And then (interrupted).

Q. West?

A. Oh, I don't know how many feet it would be. There was a place to pull the logs up and pull them on the carriage.

Q. Was that a slip built from the mill down into the water? A. Yes, it was a slip.

Q. What was the type, or what was the condition of the bank on the north side of the lot—that is, the bank of the river? Was it steep or gradual?

A. It was fairly steep. A little slope.

Q. And down that bank you had your slip, is that it? A. Yes.

Q. Into the mill pond? A. Yes.

Q. Now, how long did you operate the mill after you got it started? Do you remember?

A. Well, in 1903, after we had the plant set up, Parker and I went up the slough and cut some logs.

Q. Oh, I see, so you—

A. (Interposed): We had another man with

(Testimony of Leo Preg.)

us and we brought them down and sawed them up.

Q. Umhum. Now, as you sawed up these logs, and as the mill [132] was operating, what, if anything, was done with the sawdust and slabs?

A. They were wheeled out into the street.

Q. They were wheeled out into the street?

A. I did some of it, myself.

Q. Were any of the sawdust or slabs ever dumped into the mill pond? A. Oh, no.

Q. Was that kept clear all of the time?

A. Kept as clear as we possibly could.

Q. Yes. Now, did you notice any action of the river on this particular mill pond as time went on?

A. Oh, yes. In 1904 I done the logging for them. For Carroll and Parker. I got 4 or 5 men up and cut logs and bring the drive down. And they sawed them up. We bring most every week a drive of logs; from the start the pond was three and a half to four feet deep. It was a fine pond. But then she gradually filled up through the summer and—(interrupted).

Q. What caused it to fill up?

A. Oh, silt.

Q. Silt that was coming down the river?

A. Yes. Further back from the pond. It all drifted up there.

Q. Was anything being dumped in there by anybody? [133] A. No.

Q. From Fairbanks?

A. No. No. And the last drive I brought down we had a hard time to get them in.

(Testimony of Leo Preg.)

Q. Because it had filled up so much with silt?

A. Probably a foot of water left there. The big ones we had to roll over the muck.

Q. I see. Now, after the saw mill was taken away, or was torn down?

A. Well, I don't know anything about after 1904. I left then, you know.

Q. Well, you left the saw mill?

A. I left. I went—(interrupted).

Q. But you didn't leave Fairbanks, did you?

A. Oh, no, but I took a job with the Road Commission.

Q. I see. Did you have any occasion to observe this lot after the sawdust—I mean, the saw mill was taken away?

A. Oh, yes, they were building up. All summer, build up and build up.

Q. Do you remember when Vachon and Sterling built their building?

A. Yes, I remember.

Q. That is the building that is on there at the present time, isn't it? A. Yes.

Q. And as time went on, what, if anything, happened to the [134] river right back of this lot? Did it move over or did it stay there, or did it build up, or what happened?

A. The river moved north.

Q. Towards Slaterville? A. Yes.

Q. And did the south bank, or left—it would be the left bank of the Chena River, build up behind Lot 6? A. Oh, yes.

(Testimony of Leo Preg.)

Mr. Taylor: Just a moment, I am going to object to a leading question, your Honor.

The Court: Objection sustained.

Q. What, if anything, happened to the Lot 6, with respect—or, what, if anything, happened to Lot 6 as the river moved over? Do you know?

A. What do you mean?

Q. As the river moved—I believe you testified that the river gradually, over a period of years, moved from the south to the north, that is?

A. Yes.

Q. Over towards Slaterville, is that right, the channel of the river?

A. Yes, the main channel moved over that way; yes. Built up right along around there.

Q. What do you mean it filled up around there?

A. With silt. [135]

Q. Was that on this lot 6 that you speak of?

A. And that lot farther back, where the playground is now. That was all water before. Where we would bring the logs in.

Q. But now, over a period of years, that has filled in, is that right? A. Oh, yes.

Q. Has that been due to the action of the river?

A. Why sure. Nothing else.

Q. Nothing else. Were you in Fairbanks in 1915, Mr. Preg? Were you living here in 1915?

A. Oh, yes; yes.

Q. I will show you Plaintiffs' Identification "2" and I will ask you if you recognize that?

(Testimony of Leo Preg.)

A. Yes. Yes. I recognize that.

Q. Can you point out on that picture the location of the lot where the old saw mill used to be? Can you tell where it is on that? A. No.

Q. Do you see this line here (indicating)? This looks like a pipe line? A. Yes.

Q. Have you—do you know what that is?

A. That is the pipe line that came from the laundry. They put it in. [136]

Q. Where did that pipe line run?

A. It run down to the river.

Q. On what street? A. Lacey Street.

Q. On Lacey Street? A. Yes.

Q. Did it run by the lot where the saw mill used to stand?

A. Yes, right along the saw mill.

Q. Right along the lot where the saw mill was?

A. Right along, on the street.

Q. Well, now, would this building just to the right of that pipe line—would that be the building that is now there?

A. Oh, it would be the building.

Q. Where the old saw mill stood?

A. Yes.

Q. Do you recall what, if anything, happened to that pipe line from year to year?

A. It got covered up with mud.

Q. What did they have to do about it, then?

A. Well, they had to extend it further down to the water. Every year.

(Testimony of Leo Preg.)

Q. Every year they had to keep extending it?

A. Yes.

Q. And adding to it in order to reach the water?

A. Yes. [137]

Q. Would you say that this was a correct representation of the water front in Fairbanks in 1915?

A. Oh, yes. That is pretty much the same.

Q. And you distinctly remember this pipe line?

A. Oh, yes; yes.

Mr. Johnson: We would like to offer, again, your Honor, Plaintiffs' Identification "2."

Mr. Taylor: No objection.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "I."

(Plaintiffs' Identification "2" admitted in evidence as Plaintiffs' Exhibit "I.")

Q. Did you used to live down near this lot where the saw mill used to be?

A. Well, not at that time. I lived over there on Lacey Street between Second and First.

Q. When was that?

A. Where the custom office is now. In that lot.

Q. I see, and when was that?

A. Oh, that was in '41. I put that building up.

Q. You put that building?

A. I built that building and sold it to him.

Q. Were you living there at that time?

A. The house where I am living in now, I moved it away from there and moved it over to Second.

Q. Have—or, rather, has the Town of Fairbanks

(Testimony of Leo Preg.)

been subject to water floods from time to time during the years since you have been here?

A. Oh, yes; sure.

Q. Have you had occasion after, to notice whether or not any soil was deposited by reason of high water? Along the left bank of the Chena River?

A. That is where it came from, from the high water.

Q. And the soil was deposited from these?

A. In 1904 and '05 they were mining in Fairbanks Creek and ground sluice, and the water would just stink when it would come down.

Q. That is the water of the Chena River was very muddy, is that right? A. Oh, yes.

Q. And how often have we had floods here in Fairbanks, that you know of? How often would you say?

A. Oh, about every year or two. High waters. The first few years what we called the June freshet. That was right every June and the end of June for several years, and that was pretty high.

Q. Would that be in addition to the high water that usually came at break-up time?

A. Well, that was in addition; yes, and then sometime you get a heavy rain, why, then, you have pretty high water, too: [139]

Q. And after they built this dyke out on the Tanana along the Tanana, did that have a tendency to reduce the flood waters in the Chena River?

A. Yes, to a certain extent, but generally when

(Testimony of Leo Preg.)

the heavy rains come, they come from the head of the Chena. That is where the most water comes from.

Q. And then we get high water, is that right?

A. Yes.

Q. Like last Spring, for instance?

A. Oh, yes.

Mr. Johnson: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Preg, you was mentioning a bank that was right back of the saw mill that you say went down fairly steep to the mill pond? A. Yes.

Q. How high was that bank?

A. Oh, I guess it was at that time about 7 or 8 feet.

Q. From the water up to the top of the bank?

A. Ya.

Q. Did that bank keep crumbling off into the slough? A. No.

Q. Or into the bite? A. No. [140]

Q. It stood up pretty straight?

A. It stood up pretty good.

Q. Was it on a little angle? A. Yes.

Q. And was you wheeling sawdust there at the same time Oscar was?

A. No. Oscar started in 1904.

Q. And what year was—

A. I was in 1903. When we started the saw mill.

Q. Now, you say this bite in there where you

(Testimony of Leo Preg.)

used to bring the logs in, was about three and a half or four feet deep?

A. Yes, from the starter.

Q. Now, that silt coming in there, did it fill it up to make any bars in that little bite there, so you could see the land had formed above the water?

A. Well, you see, it built up clean out all around there; them ponds, you know, we had out there to bring the logs in there. Kind of helped to get the water there to settle and that was building up all along.

Q. I mean, did it ever pile up to the time you could see the ground was above the water, and the water had disappeared?

A. No, there was always water enough at that time, but of course later years, it built up and built up.

Q. Don't you think part of that was built up by people dumping things in there? [141]

A. I don't think so.

Q. You don't think so? I mean, after the mill was taken away and they didn't need that pond?

A. Well, the pond was pretty full. I know the last time we brought the logs down, we had a hard time getting them in because the pond had filled in with sediment.

Q. That could have been, Mr. Preg, due to the fact the time you brought your last boom down you might have had real low water? A. Yes.

Q. Your water varies from day to day, does it not?

(Testimony of Leo Preg.)

A. Yes. As I say, it was low water and the pond was low.

Q. Your water would be correspondingly lower in the pond. But still, as low as it was, you could still get the logs in? A. Yes.

Q. Just the same as this pipe line; isn't it a fact that when the water got real low, which I would say it was at the time this was taken, October 15, you would have to extend this pipe line out farther so you could siphon the water up to the laundry?

A. Yes, because the pipe line got covered up with silt.

Q. And other times, possibly in June, you could cut that pipe line way off up by the edge and you still got lots of water?

A. Well, of course they got lots of water then, but some of it get covered up and they want more water, the next year [142] they have to build further out and dig down.

Q. Now, of course, the debris and silt and alluvial deposit coming down the river would naturally lodge in front of that pipe, wouldn't it? It would act as a precipitant for that silt and sand?

A. Yes.

Q. Now, according to your opinion, then, Mr. Preg, there is as much water in the Chena River now as there was in those days?

A. Oh, just about, I guess.

Q. You were here last year when we had the big flood? A. Yes.

(Testimony of Leo Preg.)

Q. And there was about as much water in there as the high water when it would break up another year? A. Oh, yes.

Q. Now, how far—about how far did you think the river moved north, Mr. Preg?

A. I think it moved—cut that bank on the north side at least fifty feet.

Q. Right straight across from the mill?

A. Yes. Yes. All along from Noyes Slough, down around.

Q. I mean, in the Chena right straight across from the mill? A. Yes.

Q. Has it moved back now to the south?

A. The river? Well, it came around the bank and then come towards the town where that turn is.

Q. Now, this Plaintiffs' Exhibit "I"—now, you see the banks of the river here, Mr. Preg (indicating)? A. Yes.

Q. And here is a large tree here (indicating)?

A. Yes.

Q. And just a short ways from the river?

A. Yes.

Q. And this was taken in 1915. That was quite awhile after you worked there? A. Oh, yes.

Q. But that river never moved over to take that tree out, did it?

A. Well, I don't know. There have been a lot of trees laying on the other side, there.

Q. I mean, it hadn't by 1915?

(Testimony of Leo Preg.)

A. I don't know, I didn't pay any particular attention.

Q. Don't you believe your reason for believing that is the fact the silt moved over here, filled in here (indicating), making a wider beach over here, made you believe the river moved over?

A. It did move over. The hot house of Carl—it moved back from the bank and it washed all out about fifty feet. Washed away over there.

Q. This filled up over here on this bank (indicating), it would naturally crowd the river over, wouldn't it? [144] A. Yes.

Q. Now, have you ever been down around the land back of Lot 6 of Block 4, back to that building that belongs to Mr. Nordale?

A. Oh, yes, lots of times.

Q. You go down there quite often?

A. Yes.

Q. And was you ever down there at any time you seen old refuse and debris being dumped into a kind of a depression back of the building?

A. Not at the back of the building.

Q. Not at the back of the building?

A. Well, there was some cans and things, like they do now. Now they throw more bottles away than cans, but nothing to do any harm.

Q. You never knew about after a fire, of a lot of old burned iron bedsteads being thrown in there?

A. No.

Q. A lot of old wagon tires?

A. No.

(Testimony of Leo Preg.)

Q. You think all that fill that was in the mill pond back of the mill was put in there by the high water? A. Yes.

Q. How high would you think it was from the ordinary water level up to where Mr. Birklid and Waxberg's building is located [145] now? How much higher do you think that is from the water level?

A. From the water level? Oh, that must be four feet, if not more.

Q. And you think the river has built that up?

A. Oh, built it further out from where he is, and back towards the bank, towards the south there, I guess. It built up the whole bank along there.

Q. You say it caved down?

A. No, built up.

Q. Oh, it built up? A. Yes.

Q. Well, I will call your attention to Plaintiffs' Exhibit "H." Now, could you show on the map there, indicate on the map where that has built up? You say that has built up?

A. Well, it built up right from the lot down.

Q. Well, here, we will say is the lot (indicating). Here is the mill or where the mill—yes, here is the mill. It built up through here (indicating)?

A. Yes, through there.

Q. Do you recognize this building here, Mr. Preg? A. Which one?

Q. That large building (indicating)?

A. Well, I think that was the hotel.

(Testimony of Leo Preg.)

Q. And then it filled up all in here (indicating) ?

A. Yes, I know they had a fireplace underneath there, and then when high water come it filled up the fire box and all water clear up, they couldn't make no more fire, but it had built up there. More every year.

Q. Then they put in a levy there? A. Yes.

Q. Do you remember when that was put in?

A. Oh, I don't remember just when they put that in.

Mr. Taylor: I believe that is all, Mr. Preg.

Mr. Johnson: That is all, Mr. Preg.

(Whereupon, Mr. Leo Preg was excused as a witness and left the witness stand.)

The Court: We will take a recess until tomorrow at 10:00 o'clock.

(Whereupon, at 5:00 o'clock p.m., Court was adjourned until 10:00 o'clock a.m., on the 10th day of May, 1949.)

Be It Remembered, that upon the 10th day of May, 1949, at 10:00 o'clock a.m., the above-entitled trial before the Court was continued, the parties being present in court in person and by their attorneys of record, as were present on the first day of the trial;

And Thereupon, the following proceedings were had:

The Court: Counsel ready to proceed with the trial of Nordale versus Waxberg? [147]

Mr. Johnson: Plaintiffs are ready, your Honor.

Mr. Taylor: Defendants are ready, your Honor.

The Court: Very well, call your witness.

Mr. Johnson: Mr. Reuel Griffin.

REUEL GRIFFIN

called as a witness on behalf of the Plaintiffs, was duly sworn and testified.

Clerk of Court: Plaintiffs' Identification Numbers "16," "17," "18" and "19."

(Plaintiffs' Identifications "16," "17," "18," and "19" were marked.)

Direct Examination

By Mr. Johnson:

Q. Will you state your name, please?

A. Reuel Griffin.

Q. Where do you reside, Mr. Griffin?

A. 550 Second Avenue.

Q. Fairbanks, Alaska? A. Yes.

Q. What is your business?

A. Merchandise.

Q. Are you also engaged in the photographic business? A. Yes, sir.

Q. A professional photographer?

A. Yes, sir. [148]

Q. Operating in Fairbanks?

A. Yes, sir.

Q. Were you engaged as a professional photographer in May and June of 1948? A. Yes, sir.

(Testimony of Reuel Griffin.)

Q. Are you acquainted with the property known as the Nordale properties, located on the northwest corner of First and Lacey Streets in Fairbanks?

A. Yes, sir.

Q. Did you—or were you acquainted with that property last May or June, in 1948? A. Yes.

Q. During the month of May and June, did you at my request, take some photographs of the building and surrounding area of the building known as the Waxberg and Birklid building, which is situated just behind the Nordale building on that property?

A. Yes, sir.

Q. Was that during the high water period in the Chena River? A. It was during—

Q. That is, it was during the flood period?

A. Yes.

Q. I will show you Plaintiffs' Identification "16," and will ask you to tell the Court what that is, if you know?

A. That is a photograph of the Waxberg and Birklid building. [149]

Q. Was that taken by you? A. Yes, sir.

Q. Do you remember the date that it was taken?

A. I noted the date on the back of the print.

Q. What date is that?

A. That is May 15, 1948, 5:15 p.m.

Q. Does that purport to represent the subject matter as it existed at the time that it was taken?

A. Yes.

(Testimony of Reuel Griffin.)

Q. Is that a true and correct picture of the building and surrounding area at that time?

A. Yes.

Mr. Johnson: We would like to offer Plaintiffs' Identification "16," if the Court please.

Mr. Taylor: We object, your Honor, upon the grounds incompetent, irrelevant and immaterial, and don't see that it goes to prove any of the issues in this case.

Mr. Johnson: Well, if the Court please, it shows the relationship between the two buildings for one thing, and it shows the high water proceeding up to the building during the flood stages.

The Court: Objection overruled. It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "J."

(Plaintiffs' Identification [150] "16" admitted in evidence as Plaintiffs' Exhibit "J.")

Q. I will show you Plaintiffs' Identification "17," Mr. Griffin, and will ask you to tell the Court what that is?

A. That is a picture of the Waxberg and Birklid building taken from the west side.

Q. Would that be the opposite side of the picture shown in Plaintiffs' Exhibit "J"?

A. Yes, sir.

Q. This was taken from the east side?

A. Yes, sir.

Q. When was that taken?

A. It was taken May 15 at about 5:15 p.m., also.

(Testimony of Reuel Griffin.)

Q. By whom was it taken? A. By me.

Q. Is that a correct representation of the buildings and surrounding area at that time?

A. Yes, sir.

Mr. Johnson: We would like to offer in evidence Plaintiffs' Identification "17," if the Court please.

Mr. Taylor: No objection, your Honor.

The Court: It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "K."

(Plaintiffs' Identification "17" admitted in evidence as Plaintiffs' Exhibit "K.") [151]

Q. Mr. Griffin, I will show you Plaintiffs' Identification "18," and I will ask you to tell the Court what that is, if you know?

A. This is a picture of the Waxberg and Birklid building taken at a later date during the flood in the Spring of 1948.

Q. Does that show the water higher than it was on the other two pictures? A. Yes, sir.

Q. What date was it taken?

A. It was taken May 20, 1948.

Q. And by whom? A. By myself.

Q. And from what direction was it taken?

A. That was from the southwest corner.

Q. Of the—? A. Of the building.

Q. Waxberg and Birklid building?

A. Yes.

Q. Is that a true and correct representation of the subject matter as it existed at that time?

A. Yes, sir.

(Testimony of Reuel Griffin.)

Mr. Johnson: We would like to offer in evidence Plaintiffs' Identification "18."

Mr. Taylor: If the Court please, I am going to object [152] to the introduction of this exhibit upon the ground it was made after the joinder of issues in the case now before us, and would have no bearing upon, or go to prove none of the issues of the case, which were joined at that time.

The Court: Objection overruled. It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "L."

(Plaintiffs' Identification "18" admitted in evidence as Plaintiffs' Exhibit "L.")

Q. Mr. Griffin, I will show you—pardon me (paused). Mr. Griffin, I will show you Plaintiffs' Identification Number "19," and will ask you to tell what that is?

A. I was asked to take a photograph of footings and surrounding area of the Waxberg and Birklid building showing accumulated sediment.

Q. After the water had receded?

A. Yes, sir.

Q. When was that picture taken, if you know?

A. The picture was taken June 5, 1948.

Q. By whom? A. By myself.

Q. Now, what portion of the Waxberg building is shown in that picture?

A. This is the footing, foundation footing of the southwest corner of the building.

Q. And does it show the immediate surface of the earth around [153] that footing? A. Yes.

(Testimony of Reuel Griffin.)

Q. Does that picture represent a true and correct photograph of the subject matter at the time?

A. Yes, sir.

Q. Did you have occasion to measure the depth of the sediment that had accumulated on the footing?

A. Yes, sir, I was asked to, and I did.

Q. Do you recall what the depth of that sediment was?

A. Well, the concrete footing was about 2 and a half inches.

Mr. Johnson: We would like to offer in evidence Plaintiffs' Identification "19."

Mr. Taylor: If the Court please, I am going to object to the admission of the identification because there is no showing of any sedimentary deposit prior to the joinder of the issues in this case, and it would be incompetent, irrelevant and immaterial to prove any of the issues in this case. I think any pictures of any sedimentary deposits in surrounding areas should have been made prior to the instigation of this action.

The Court: Objection overruled. It may be admitted.

Clerk of Court: Plaintiffs' Exhibit "M."

(Plaintiffs' Identification "19" admitted in evidence as Plaintiffs' Exhibit "M.")

Mr. Johnson: You may cross-examine. [154]

(Testimony of Reuel Griffin.)

Cross Examination

By Mr. Taylor:

Q. Mr. Griffin, you say that this Plaintiffs' Exhibit "J" was taken on June 15, 1948?

A. I will have to see the date. This was taken on May 15, 1948.

Q. And did you take any pictures of any other property down in that particular part of town?

A. I don't recall.

Q. Did you pay any attention over on what is known as the Children's Playground, if that area was covered with water? A. No, sir.

Q. Did you look? A. No, I didn't.

Q. And you were standing in Lacey Street when this was taken? Or across Lacey Street?

A. I believe that the water came up into the street and I was standing in the street that actually runs more or less east and west.

Q. Wendell Avenue? A. I guess so.

Q. Well, this—in front of Waxberg and Birklid building is Lacey Street, running north and south?

A. Yes, that is the end of Lacey Street there (indicating).

Q. Plaintiffs' Exhibit "K," that was taken at the same time, [155] was it? On May 15, 1948?

A. Yes, the same trip.

Q. Was that prior to the water's reaching its highest level, or was it the low?

A. That was prior to its having reached its highest level.

(Testimony of Reuel Griffin.)

Q. And what were you standing on when that picture was taken, Mr. Griffin?

A. I was up on the bank back of the U.S.O. building.

Q. Now, calling your attention to Plaintiffs' Exhibit "L," will you state if that is the highest point that the water reached during that flood?

A. I am not sure whether that is the very highest it reached, but I was asked to go down and take this picture after I had taken those, because of the water having risen higher.

Q. While you were down there that time, did you see any other buildings that were flooded out upon Wendell Avenue?

A. There was a small M.P. station, or some sort of building sitting out in the water there at Lacey and Wendell.

Q. Well, over towards the ball park, looking east on Wendell, was there a number of those buildings that were flooded? A. I really don't recall.

Q. Well, I am calling your attention to the car pound you have down there. Wasn't there a number of those cars under water? [156]

A. I am sure there was.

Q. Could you tell how far up in this building that water was, from the floor? A. No.

Q. Now, this picture, Plaintiffs' Exhibit "M," was taken on the—June the 5th, is that right? And how deep was the sediment where the grass was, Mr.—?

(Testimony of Reuel Griffin.)

A. I know that this old shoe that had been laying on top of the ground was about covered over, and there was sediment on top of the grass which was—had been bent over and weighted down by the sediment. The only measurement I took was of the sediment on top of the concrete footing under this corner of the building, and that was about two and a half inches.

Q. Now, isn't it possible that there could have been dirt on that concrete footing before the flood?

A. It is possible.

Q. And it would be soaked up and you could take a measurement and it would show two and a half inches, but there might only be one and a half inches of sediment deposited by the flood?

A. I don't know how much was deposited by that particular flood. I just measured the sediment on the footing.

Q. Now, calling your attention to the old shoe here, doesn't it appear to you in there that possibly a half an inch or [157] less of sediment is on top of that shoe?

A. Well, the shoe is practically buried.

Q. Well, the shoe was in there quite a while, wasn't it? A. Perhaps it was.

Q. The sediment—if it run off the shoe, it would be deeper on either side?

A. I would think it would take at least two inches of sediment to take that shoe at a point, unless it had been buried.

(Testimony of Reuel Griffin.)

Q. The shoe was quite a battered old shoe, was it not?

A. It was apparently, a large man's shoe.

Q. Now, how was this sediment, wet and damp at the time you went down? A. Yes, sir.

Q. And hadn't settled, yet?

A. Well, it apparently had settled.

Q. Have you been down there since you took these pictures, Mr. Griffin? A. No.

Q. Since this sediment dried? A. No, sir.

Q. You don't know how deep it is now, then?

A. No.

Q. You don't know whether it appeared like that or whether it appeared there had never been any sediment? A. That is right. [158]

Mr. Taylor: That is all.

Mr. Johnson: That is all, Mr. Griffin. Thank you.

(Whereupon, Mr. Reuel Griffin was excused as a witness and left the witness stand.)

Mr. Johnson: If the Court please, I would like to recall Mr. Lee Linck for some questions.

The Court: Very well.

LEE S. LINCK

having previously been duly sworn, was recalled as a witness on behalf of the Plaintiffs and testified as follows:

Direct Examination on Recall
By Mr. Johnson:

Q. Your name is Lee Linck? A. Yes.

(Testimony of Lee S. Linck.)

Q. And you have testified in this case previously? A. Yes.

Q. And were sworn? A. Yes.

Q. Mr. Linck, did you, since you have testified here previously, have you, at my request, run some levels on the lot which is in question here? That is, levels from First Avenue down to the Chena River? A. Yes.

Q. And did you make notes of those levels as you took them? [159] A. Yes.

Q. I will show you Plaintiffs' Exhibit "G," and will ask you to indicate on that exhibit, if you can, where you took these levels and what they show as to the relative profile of that property.

Mr. Taylor: If the Court please, we are going to object to any introduction of any testimony along these lines unless it is shown by this witness that the conditions are the same now as existed at the times testified by the other witnesses for the Plaintiff.

The Court: Objection overruled.

A. Using the ground level on the southeast corner of Lot 6 as a point of beginning, we found that the elevation of the ground 86 feet south of that point and along the east line of Lot 6, was 1.6 feet lower than the starting point.

Q. Now, using the southeast corner as the starting point and at the mean level, zero, or whatever you would do, how far down did you go down for the first point on the east line of the lot?

(Testimony of Lee S. Linck.)

A. The first point was 86 feet.

Q. And what was the level at that point?

A. That is 1.6 feet lower than the southeast corner.

Q. Now, would you just indicate on this Exhibit about where it was?

A. Right here (indicating). [160]

Q. Put the level in there.

A. The next level we took was 118 feet from the point number 1, we will call it, starting point, and that was 5.9 feet lower than point number 1.

Q. Can you indicate that on this exhibit, now, about where it was?

A. (Indicated.) And the third was taken at 133 feet north of point number 1, and that was minus 4.4 feet. That is approximately in line with this building (indicating). And the fourth shot was taken at 210 feet north of point number 1, and it was 5.7 feet lower than shot number 1. That was approximately here (indicating). Then the sixth shot was 284 feet north of point number 1, and it was 6.5 feet lower.

The Court: How much was that?

A. 6.5 feet lower.

Q. Now, will you indicate where that is?

A. (Indicated.) The next shot we took is on the southwest corner of Lot number 6.

Q. Would that be at the water level?

A. No, that is at the southwest corner near the

(Testimony of Lee S. Linck.)

street, and that was .7 feet higher than shot number 1.

Q. Well, now, what do you mean "shot number 1"?

A. That is this, here (indicating). This point is seven-tenths of a foot higher than your first shot. Then your next point was taken approximately 132 feet north of the southwest [161] corner of Lot number 6.

Q. Along the west boundary?

A. Along the boundary, and that was 1.3 feet lower than shot number 1. And the next point taken was 153 feet north of the southwest corner of Lot number 6, and that was 6.5 feet lower than shot number 1, and the last shot was taken 1—205 feet north of the southwest corner of Lot 6 and that was 7.5 feet lower than shot number 1.

Q. Did you have occasion to run any other levels down through the center of the property?

A. No.

Q. You just ran them on the—

A. On the boundary lines.

Q. What is the general—from your examination, what is the general contour of the property between the two boundaries? Is it more or less level east and west?

A. There appears to be a depression immediately north and under a portion of the Nordale building.

Q. Is that much of a depression, or is it—

(Testimony of Lee S. Linck.)

A. Well, it varies. It is approximately 4 feet lower than the ground immediately south.

Q. But I am talking now about across the property, generally. Is it fairly level, so that there wouldn't be any high ridges down the center of the property? That is what I had in mind. [162]

A. No.

Q. Now, Mr. Linck, do you have in your possession a copy of the original survey notes that were made by the surveyor who laid out the Townsite of Fairbanks? A. Yes.

Q. Where did you obtain that copy?

A. From the City Engineer's Office.

Q. And have you examined those notes?

A. Yes.

Q. Recently? A. Yes.

Q. Do you recall, referring to Plaintiffs' Exhibit "F," and more particularly to Lot 6 in Block 4, do the notes describe the north boundary of that lot, as you examined them?

A. Yes, they do.

Q. And what do the notes say about that boundary and its reference to the meander line of the Chena River?

Mr. Taylor: We object. The original notes, your Honor, is the best evidence. We are going to object under the best evidence rule.

Mr. Johnson: If the Court please, it is used as a memorandum. He can testify that he examined.

The Court: These are just copies, are they?

(Testimony of Lee S. Linck.)

Mr. Johnson: Yes.

The Court: Objection sustained. [163]

Q. You have had occasion, and a good deal of experience, in surveying in and around Fairbanks have you not, Mr. Linck? A. Yes, sir.

Q. And from your experience can you tell, by examining this map, what the north boundary line of Lot 6—rather, how the north boundary line of Lot 6 corresponds to the meander line of the Chena River?

Mr. Taylor: If the Court please, I believe the exhibit speaks for itself.

The Court: Objection sustained.

Mr. Johnson: That is all.

The Court: Are you asking about the present meander line? Were you talking about the meander line that he, himself, knew?

Mr. Johnson: No, I was talking about the meander line of the original—that is shown on the original plat.

The Court: That is what I thought. Yes. My ruling was, the objection was sustained.

Q. You have seen, and when you made this survey and plat—the present meander line of the Chena River. How does that correspond with the north boundary of the property which you made and is shown in this plat?

A. We have indicated the north boundary of this plot of ground as the approximate meander line—the present meander line of the Chena River. [164]

(Testimony of Lee S. Linck.)

Mr. Johnson: Does the Court have any questions?

The Court: No.

Mr. Johnson: That is all, Mr. Linck.

Mr. Taylor: No questions.

(Whereupon, Mr. Lee S. Linck was excused as a witness and left the witness stand.)

Mr. Johnson: Oh, excuse me. The Plaintiffs rest.

Mr. Taylor: If the Court please, at this time I would like to move that the Plaintiffs' case be dismissed upon the ground there has been a total failure to prove the material allegations of the Complaint in that they have not proved that the building upon the land in question, which was built, was by accretion, as defined by law, a slow and impermeable natural deposit of sedimentary matter of alluvial deposits. We feel they have failed to prove the material allegations.

The Court: Motion denied.

Mr. Taylor: I would like to call Mr. Waxberg.

A. E. WAXBERG

one of the Defendants, was called as a witness on his own behalf and was duly sworn and testified.

Mr. Taylor: If the Court please, I wonder if we could have about ten minutes? I expected it to be a little later than this before we got to our case. I have one witness here, I haven't talked to at all, yet.

(Testimony of A. E. Waxberg.)

The Court: Yes. We will take a recess until ten minutes [165] to 11:00.

(Whereupon, Court was recessed for ten minutes.)

The Court: Ready to proceed?

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. A. E. Waxberg.

Q. And where do you reside, Mr. Waxberg?

A. Graehl.

Q. And what is your occupation?

A. Carpenter.

Q. And are you in business in Fairbanks?

A. Yes.

Q. What type of business are you in?

A. General contracting.

Q. And do you have a partner? A. Yes.

Q. And what is the firm name of your—

A. Waxberg and Birklid.

Q. Where is—do you maintain a headquarters or shop here?

A. Yes, we have a shop on the base of the Chena.

Q. Where is that located, Mr. Waxberg?

A. At the end of Lacey and Wendell on the banks of the Chena. [166]

Q. And how long have you had the shop there?

A. Oh, approximately ten months.

Q. And which side of Lacey does the shop—is the shop situated?

(Testimony of A. E. Waxberg.)

A. It is on the left-hand of Lacey, facing the river.

Q. And about how far from the river?

A. Oh, I would say 60 feet.

Q. How did you acquire the land upon which your shop is located, Mr. Waxberg?

A. Well, I filed on it. I staked on it.

Mr. Johnson: Well, if the Court please, we object to that and move it be stricken—the answer—on the ground it is incompetent, irrelevant and immaterial. Not within the issues joined by the Pleading. Nothing in the Answer that says anything about staking.

The Court: It is correct, the Pleadings don't set up any right to the Defendant. Just deny the right of the Plaintiff.

Q. Now, Mr. Waxberg, when you went on the land—that is, where your building is located now, was there any improvement thereon? A. No.

Q. Was there any record in the—or did you make any search of the records of the United States Commissioner to ascertain whether or not that land was owned by any person? [167] A. Yes.

Mr. Johnson: We object to that, if the Court please, and move the answer be stricken, on the ground it is incompetent, irrelevant and immaterial. Not within the issues joined by the pleadings.

The Court: It may be stricken.

Q. Now, Mr. Waxberg, pursuant—or after you

(Testimony of A. E. Waxberg.)

secured this ground you then built your building?

A. Yes, we did.

Mr. Johnson: We object to that and move to strike the answer because there is no previous testimony that he secured the ground.

Q. After you went on the ground you built your building?

A. Yes, we moved part of it on there and added to it.

Q. And was you then enjoying the possession of the ground without any trouble?

Mr. Johnson: We object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: I think you have alleged that he ousted you and you denied that. Objection overruled.

Q. Did you have any trouble to get on that ground?

A. No. The only thing is the city called us when we moved the building over and wanted to know how— (Interrupted.)

Mr. Johnson: We object to that, if the Court please; [168] incompetent, irrelevant and immaterial. Hearsay.

The Court: Objection sustained.

Q. When—where—how—where did you build the building that is on that lot now, Mr. Waxberg?

A. Where?

Q. Yes. A. I built it in Graehl.

(Testimony of A. E. Waxberg.)

Q. And how did you get it onto the—onto this land that is now in dispute?

A. I hauled it down the river and up onto the property where it is now located.

Q. And what was—if anything—was said to you by the Plaintiff in this case, regarding your house—your building being on that particular lot?

A. Well, I don't recall. He wanted us to move it off of there shortly afterwards, as near as I recall, and I couldn't see where he had any legal right— (Interrupted.)

Mr. Johnson: Now, we object to that, if the Court please, and move to strike the answer as not being responsive.

The Court: It may be stricken.

Q. Now, did the city make any objections to you— (Interrupted.)

Mr. Johnson: We object to that as being incompetent, irrelevant and immaterial. Purely hearsay. Not within the issues joined. [169]

The Court: Objection sustained.

Q. Mr. Waxberg, when you went on that ground that you claim, was there any improvements there, of any kind or nature on the ground?

A. No.

Q. What, if any, improvements was lying south of the building that you put up?

A. None that I noticed. There is an old building there.

(Testimony of A. E. Waxberg.)

Q. What was the foundation of that old building? A. It is standing on piling.

Q. And how long are those piling, Mr. Waxberg?

A. Oh, I would judge—they vary. The ones in the middle of the building are possibly 6, 7 feet in the ground, and on the edges, why, that has been filled in on both sides so it is right up even with the edge of the building.

Q. Now, how much higher is the floor of that building than the floor of your building, Mr. Waxberg? A. Roughly three feet.

The Court: How much?

A. Three feet.

Q. Now, calling your attention to Plaintiffs' Exhibit "G," to the various levels that was testified to by Mr. Linck this morning, would you state whether or not you have taken any levels on those particular points, or adjacent thereto?

Mr. Johnson: Well, if the Court please, we object to [170] that on the ground the proper foundation hasn't been laid. No showing he is qualified to take the levels in the first place, and if any levels were taken by anyone else, this isn't the proper testimony.

The Court: All right, objection sustained.

Q. Now, Mr. Waxberg, did you take any levels from a point by your building to the intersection of Lacey and First Avenue? A. Yes.

Q. And— (Interrupted.)

(Testimony of A. E. Waxberg.)

Mr. Johnson: We object to that and move to strike the answer for the reason previously stated, your Honor, that he isn't qualified or hasn't been shown to be qualified to take any levels.

The Court: All right, the answer may be stricken.

Q. Mr. Waxberg, are the levels taken by Mr. Linck approximately correct?

A. I would say so.

Q. And all of those levels, so far as you know, are correct, are they not?

A. I would say they are; yes.

Q. You have run levels, have you, Mr. Waxberg?

A. Yes, many times.

Q. And in your business you are required to do that? A. Yes.

Q. And you have leveled through on these things and that is [171] the reason you know that those things are approximately the levels?

A. That is right.

Q. Now, calling your attention to the building of the Plaintiffs which lies immediately south of your building, would you state whether the ground under the back end of their building is higher or lower than the ground where your building is?

A. It is lower; yes. There is water in there right now.

Q. But how much lower, Mr. Waxberg?

A. Oh, approximately two feet.

Q. And is that part of the building—what is

(Testimony of A. E. Waxberg.)

under the Nordale building—was that subjected to the overflow of water that was in there last year?

A. Yes, it was.

Q. And if any overflows, then, that come up this last year, or previous years, would naturally overflow into that natural depression, would it not?

A. Yes.

Q. And has that depression, or lower area south of you, has that ever filled with silt and alluvial deposits by the river?

A. Oh, I imagine to a certain extent; yes.

Q. Has it ever filled it up to the level of your land? A. No. [172]

Q. And this last fall—last summer, was there water underneath that building? A. Yes.

Q. Now, what is the character of the soil upon which your building is standing, Mr. Waxberg?

A. Well, as near as we can ascertain, it is, oh, rubbish and tin cans and fill. There is a certain amount of sediment and deposit.

Mr. Johnson: Now, we object and move to strike the answer on the ground no proper foundation has been laid. Nothing to show they made any tests.

The Court: All right, motion to strike granted.

Q. What, if anything, have you done to determine the character of ground claimed by you where your building is?

Mr. Johnson: If the Court please, we object to the use of the word "claimed." There is nothing

(Testimony of A. E. Waxberg.)

in the pleadings that covers that. It is beyond the issues.

The Court: Objection sustained.

Q. Well, Mr. Waxberg, do you claim that land where your building is located? A. I do.

Mr. Johnson: We move to strike—object to that and move to strike the answer.

The Court: Sustained.

Q. What, if anything, have you done to determine the character [173] of the land where your building is located?

Mr. Johnson: We object to that, if the Court please, incompetent, irrelevant and immaterial. Not within the pleadings.

The Court: Objection overruled.

A. I have never made any definite survey, other than when we installed an oil tank there last fall for oil burners for heating the building. We did dig a hole in front of our building then, and put a 500 gallon tank in there.

Q. How deep was that hole, Mr. Waxberg?

A. Oh, six, seven feet.

Q. And what would you say as to the level of that hole with the level of the Chena River?

A. Approximately water level.

Q. And what was the character of the earth that you found at the bottom of that hole that was six or seven feet deep?

A. Well, it was all kinds of materials. There was tire rims and bedsteads and tin cans and logs

(Testimony of A. E. Waxberg.)

and oil barrels. There was an oil barrel close to the bottom of it that was standing straight up and down, full of rubbish.

Q. And you say that would be approximately—that the level of the river—the river level?

A. The barrel would be approximately the river level. Maybe a little bit higher than normal river level.

Q. And how big was that hole, Mr. Waxberg?

A. Why, I would say it was four and a half by seven feet.

Q. And that was big enough to contain a 500 gallon drum? A. Yes.

Q. Where was that hole in relation to the building—your building?

A. Just right in the front of the building.

Q. And how far would that be in back of the Nordale building?

A. 25 to 30 feet; something like that.

Mr. Taylor: Now, I would like to have that marked for Identification.

Clerk of Court: Defendants' Identification "A," "B" and "C."

(Defendants' Identifications "A," "B" and "C" were marked.)

Q. Now, Mr. Waxberg, I hand you Plaintiffs'—Defendants' Identification "A," and I ask you to state what that is.

A. Well, this is the hole that we dug to place our fuel oil tank in.

(Testimony of A. E. Waxberg.)

Q. And when was that hole dug?

A. I believe it was in September. I would have to check our records to give you a definite time.

Q. And who took that picture?

A. Earl Wyman.

Q. And under whose direction and authority?

A. I asked him to take the picture. [175]

Q. And is that a true representation or picture of that hole as it existed at that time?

A. Yes sir.

Mr. Taylor: If the Court please, we would like to introduce this in evidence.

The Court: What year was that?

Mr. Taylor: 1948.

A. 1948.

Mr. Johnson: Well, if the Court please, we object on the ground that it is incompetent, irrelevant and immaterial. No proper foundation has been laid for its introduction, and that is not within the issues joined by the pleading.

The Court: May I see it, Mr. Taylor?

(Mr. Taylor handed the picture to the Court.)

Mr. Taylor: If the Court please, we feel it is certainly within the issues, or the issue as to whether or not it is accretion at that particular point.

The Court: Is the hole clear down in this picture that was taken?

(Testimony of A. E. Waxberg.)

A. I don't believe so. He was still working in there. I think we went down a little lower. You will note in the left hand corner there is an oil drum. You can see the first rim of the drum. You know how they are made, and I think we went down a little further than that; about eight or ten inches. However, we have the other pictures showing [176] . . . (interrupted).

The Court: Objection overruled. It may be admitted.

Clerk of Court: Defendants' Exhibit Number "1".

(Defendants' Identification "A" admitted in evidence as Defendants' Exhibit "1".)

Q. Calling your attention to Plaintiffs—or, Defendants' Identification—Exhibit "1", Mr. Waxberg, would you indicate on that picture where the oil drum that you mentioned—is located?

A. Yes, it is to the right of the shovel, here (indicating).

Q. Would it be all right to mark that with a pen, your Honor?

The Court: Yes.

Q. And would you state what was the character of the material that you shoveled off at the bottom of that hole, especially this dark colored material (indicating)?

A. Well, it is very obvious to be filled, because it is logs. You will note there is logs—there are two logs here and a short chunk of wood there along-

(Testimony of A. E. Waxberg.)

side the drum, and tin cans and tire rims and so on and so forth.

Q. What other stuff was in there, if you remember, Mr. ____?

A. Well, that has been quite some time ago. I don't recall just what all was in. Just garbage. I mean, tin cans and stuff like that.

Q. I hand you Defendants' Identification "B", and ask you what [177] that is?

A. This is the material that was shoveled out of the hole.

Q. And when was that shoveled out, Mr. Waxberg? A. At that time I was digging the hole.

Q. Last September, did you state before?

A. Yes, in September.

Q. And how deep was the hole at the time that picture was taken?

A. Well, we were just—the job was just about done. We did go down a little bit after that.

Mr. Taylor: If the Court please, I would like to have that introduced in evidence and marked Defendants' Exhibit "2".

Mr. Johnson: We object, if the Court please, on the grounds it is incompetent, irrelevant and immaterial. No proper foundation laid for its introduction.

The Court: May I see it, Mr. Taylor? (Pause.) Objection overruled. It may be admitted.

Clerk of Court: Defendants' Exhibit Number "2".

(Testimony of A. E. Waxberg.)

(Defendants' Identification "B" admitted in evidence as Defendants' Exhibit "2".)

Q. Mr. Waxberg, calling your attention to Exhibit—Defendants' Identification Number "2", would you state what those articles are that are on—that you took out of there?

Mr. Johnson: Well, if the Court please, I think the exhibit speaks for itself, now that it is introduced. He has [178] already explained.

The Court: Objection overruled.

A. There is lumber and—or old pieces of board and boxes, and also a bedstead and hoops from drums and barrel staves and stuff like that, and we have that, yet, in our possession that we can produce. I saved it.

Q. I hand you another photograph and ask you when that was taken and who by and under whose direction?

A. Well, this was taken by Earl Wyman at the same time these other pictures were taken.

Q. And was the hole about the same?

A. Well, we hadn't completed—I don't believe we had even got down to the drum at that time. I don't see it in this picture.

Mr. Taylor: If the Court please, I would like to offer this in evidence.

Mr. Johnson: Well, we object to it, if the Court please, on the ground it is incompetent, irrelevant and immaterial. No proper foundation laid and their appears to be a pick and shovel in the picture,

(Testimony of A. E. Waxberg.)

which I don't believe it was testified to as having been found in the hole.

Q. Was that pick and shovel in the hole?

A. Yes, we used the pick and shovel in the hole and we also left it in there for the taking of the picture for comparable—showing the depth of the hole, more or less. You [179] have to have something to show the depth of the hole, and it made a good background to indicate it.

The Court: Is the picture a true representation of the appearance of the hole at the time the photograph was taken? A. Yes.

The Court: Objection overruled. The picture may be admitted.

Clerk of Court: Defendants' Exhibit Number "3".

(Defendants' Identification "C" admitted in evidence as Defendants' Exhibit "3".)

Q. Calling your attention to Defendants' Exhibit Number "3", Mr. Waxberg, would you state what that part of a circle is?

A. Well, that is a rim from an old model car. It is a clincher tire rim, is what it is.

Q. Now, I believe you stated in response to my previous question, that this dark area in here was all filled in? A. That is all filled.

Q. Now, what is the next strata, Mr. —?

A. Well, that is more or less a sedimentary deposit, I would say.

Mr. Johnson: Well, if the Court please, it

(Testimony of A. E. Waxberg.)

seems to me this picture should speak for itself.
This witness is not qualified as an expert on geology.

The Court: Objection overruled.

A. I would say it is almost all sedimentary fill. However, [180] there is good sized rocks in there that anyone would definitely know couldn't have been floated in there, and in along with this sedimentary fill, why, we also found boards and logs and pieces of tin and what have you.

Mr. Taylor: If the Court please, I would like, at this time, to excuse Mr. Waxberg and call Mr. Ragle. Mr. Ragle is the head of the Geology Department—and of the privilege of recalling Mr. Waxberg.

The Court: Yes.

(Whereupon, Mr. A. E. Waxberg was temporarily excused as a witness and left the witness stand.)

RICHARD RAGLE

called as a witness on behalf of the Defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Richard Ragle.

Q. And where do you reside, Mr. Ragle?

A. 910 Cowles, Fairbanks.

Q. And what is your occupation?

A. Professor of Geology at the University of Alaska.

(Testimony of Richard Ragle.)

Q. And are you a graduate of a recognized Geology school? A. I am.

Q. And where did you graduate from? [181]

A. Colorado College.

Q. Which? A. Colorado.

Q. And have you followed that occupation since your graduation?

A. For approximately two-thirds of the time.

Q. When did you graduate from Colorado University?

A. First in 1933, and received an advanced degree in 1937.

Q. And what does the practical application of geology do? What is its functions—the function of geology?

A. I am afraid your question is too broad to be answered in anything less than a . . . (interrupted).

Mr. Johnson: If the Court please, I think we would have to go out and attend one of his classes to get the answer to that question, wouldn't we?

Q. Well, perhaps I could ask for—a more or less leading question to get that out. Is one of the purposes of geology to determine the formation of land and rock structures?

A. That would be correct.

Q. And are you acquainted with Mr. Waxberg and Mr. Birklid?

A. I believe I met Mr. Waxberg for the first time, today. I had met Mr. Birklid prior to the war.

Q. Do you know where Mr. Waxberg's carpenter shop is? .

(Testimony of Richard Ragle.)

A. It has been pointed out to me; yes.

Q. And have you ever been down there to that shop?

A. I have never been to the shop; no. I have been in that [182] vicinity, though.

Q. And about what was your purpose in going to that vicinity, Mr. Ragle?

A. To investigate the origin of the strip of land lying between Wendell Avenue and the Chena River.

Q. And what investigations, if any, did you make?

A. The examination of the physical structure of the land, itself; of the character of the slope; of the pattern of erosion and depth situation of the river, and the examination of the age of certain trees at various points throughout the area, to determine time factors.

Q. And on the ground immediately surrounding the Waxberg and Birklid shop what investigation, if any, did you make on that ground, Mr. Ragle?

A. Examination of the character of the land underneath the building now occupied by the Economy Store. An examination of the nature of the land directly adjacent to the present channel of the Chena, and of certain test pits in the ground to determine what the nature of the ground lying between the river and the Economy Store must have been.

Q. And what was the type of investigation carried out, Mr. Ragle? Just what did you do to determine the character of that ground?

(Testimony of Richard Ragle.)

A. The ground directly—for the ground directly included in this case, referring particularly to that ground surrounding [183] the Waxberg-Birklid building, to examine two holes that had been sunk, apparently as test pits. To determine the nature of that particular soil. I examined the river bank to determine the position of the actual river, itself, and the nature of ground lying on top of the river slope.

Q. And did you make any excavation—any diggings? A. I did not.

Q. Did you have any made?

A. There were test pits already available for examination.

Q. And as a result of that examination, Mr. Ragle, would you state your findings—your opinion as to the formation of that land lying between the building housing the Economy Store, and the river?

Mr. Johnson: If the Court please, we object now to any further testimony on the ground it is incompetent, irrelevant and immaterial. No proper foundation has been laid, and also that it is not within the issues joined by the pleading.

The Court: I think it is within the issues. I don't think, though, he has definitely shown what he found in these holes which I think should be shown before he expresses his opinion, and also, I think it should be shown definitely just where these holes are, how deep they were, what size, and so forth. I don't think the foundation has been laid, yet, for the opinion.

(Testimony of Richard Ragle.)

Q. Where, in relation to the Waxberg and Birklid shop, were these holes? [184]

A. One hole was directly to the South of the Southwest corner of the Waxberg-Birklid building, approximately ten feet from the end of the building. Possibly 6 feet East of the West end of the building, and ten feet South of that same end. The hole was between three and four feet deep, diameter of approximately 2 feet. It is made up of—the material surrounding that hole was made up of a mixture of waste articles such as cut and rusted tin cans, pieces of earth, remnants of pieces of box wood, all mixed together without orientation with soil—dirt. The second hole I examined was a little farther South and possibly not on the Waxberg-Birklid property, and consisted of—well I am not just sure where the property line lies in that vicinity.

Q. How far would that hole be from the Waxberg and Birklid building?

A. Probably twenty feet from the Southwest corner in a Southwesterly direction.

The Court: Twenty feet from the corner and how far from the back of the building—that is, the South end of the building?

A. I didn't measure it, but I would estimate from ten to twelve feet. This was a . . . (interrupted).

Q. How deep was that hole?

A. A trench not more than two feet deep and the composition of the soil was as I have described

(Testimony of Richard Ragle.)

for the other hole. Not [185] systematically arranged; a conglomeration of tin cans, fragments of industrial waste, and unstratified soil.

Q. What would you say as to whether or not that was an accretion of sedimentary material?

Mr. Johnson: Well, we object to that, if the Court please, as calling for a conclusion and no proper foundation has been laid; incompetent, irrelevant and immaterial at this time.

The Court: Objection overruled.

A. The material had not been transported to its present site by any natural agency. It had not suffered any differential flotation due to transportation by running water, and there was not stratification; fragments of wood that were present below the surface indicated that water was not present at the time this material was deposited.

Q. And did that opinion apply to the material found in both holes, Mr. Ragle?

A. That is correct.

Q. Now, did you make any investigation near the river bank? A. I did.

Q. And what was the nature of that investigation, Mr. Ragle?

A. Examination of the erosion line at normal high water level for the Chena River showed the presence of two very differing strata of recent soil.

Q. And did you, from your examination—from your—of that particular area, what would you say as to the Chena River [186] changing its bed or moving towards the North?

(Testimony of Richard Ragle.)

A. It would be difficult to establish any movement at that particular place, as the evidence indicates the bank has been very stable at that point for quite a long time. Within the recent geologic past, however, the bank undoubtedly has migrated from South to North.

Q. What would you say as to vegetation on that particular area—piece of land, Mr. Ragle?

A. There was no vegetation that I noticed, other than grass to the West of the extension of Lacey Street.

Q. And were there any trees at the bank of the river?

A. At the bank of the river directly opposite the end of Lacey Street there is a clump of alder trees.

Q. And how big were those trees, Mr. Ragle?

A. They varied in height from high shrubs to approximately 12 feet in height.

Q. Now, I hand you an object. Would you state what that is, Mr. Ragle?

A. This is an exhibit of a cross section of a small alder tree and several cores taken from a series of other trees in the vicinity. Do you want me to identify the position?

Q. I think just the large one.

A. This is a section from an alder tree removed from the clump of trees at the bank of the Chena River opposite the extension of Lacey Street. [187]

(Testimony of Richard Ragle.)

Mr. Johnson: Opposite the extension of Lacey Street, did you say?

A. Lacey Street to the river; yes.

The Court: You mean if the street were extended, it would be in the middle of the street?

A. That is correct.

Q. How far from the water line was that clump of trees, Mr. Ragle?

A. The clump of trees was growing . . . (interrupted).

Mr. Johnson: If the Court please, we are going to object to any further testimony along this line for the reason it is incompetent, irrelevant and immaterial. It is not shown to be on the property in question.

The Court: I believe you are correct. It would be on Lacey Street and not on the property.

Mr. Johnson: I believe the witness said this clump of trees would be on an extension of Lacey Street.

The Court: Objection sustained.

Q. I am going to ask one more question. How far was that from the line—from the Lacey Street line?

Mr. Johnson: Well, we object to that, if the Court please, being incompetent, irrelevant and immaterial. And not within the issues and not part of the property in question.

The Court: Well, I will permit the question and see if it is relevant. [188]

(Testimony of Richard Ragle.)

A. The distance from the Lacey Street line wasn't measured. The extension of the street to the river would require the removal of this clump of trees, unless the street were caused to veer from one side or the other.

Q. It would be in Lacey Street, then?

A. That is my opinion.

Q. And adjoining the property of Mr. Birklid and Waxberg, is that right?

A. That is correct.

The Court: Just a minute, I didn't quite understand that. Read that question and answer, please.

(Whereupon, the Court Reporter read the question and answer.)

Mr. Johnson: If the Court please, I think that question and answer be should be stricken out of on the ground it is not competent, relevant or material. It shows that this clump of trees he has testified to is definitely off the property in question here.

The Court: He has it now where it is adjoining it, and not on it. I think you should definitely fix where those trees . . . (interrupted).

Mr. Johnson: He just testified, your Honor, Lacey Street, in his opinion, if extended, that clump of trees would have to be taken out, or Lacey Street would have to veer one way or another, isn't that correct? [189] A. That is correct.

The Court: In other words, it would be right

(Testimony of Richard Ragle.)

in the middle of Lacey Street, if Lacey Street were extended? A. That is correct.

The Court: All right, I will sustain the objection, Mr. Johnson.

Q. Mr. Ragle, in making a cross section of that tree and arriving at its age, I had you testify as to how long the present back of the Chena River has been where it is . . . (interrupted).

Mr. Johnson: We object to that, if the Court please; incompetent, irrelevant and immaterial. No proper foundation laid and not within the issues.

Mr. Taylor: If the Court please, I believe this is the gist of the whole thing. They are trying to say this bank moved over to the North in a few years.

The Court: How far were these trees from First Avenue?

A. That distance hasn't been surveyed, your Honor. I couldn't testify exactly how far it is.

Examination by the Court

By Judge Pratt:

Q. Can you estimate it?

A. I could refer it to the present river bank of the Chena.

Q. All right, how far from the present river bank? [190]

A. These are on the portion of material resting on the erosion area of the present channel of the river, and from the high water line at the time of the taking of the sample, about twelve feet.

(Testimony of Richard Ragle.)

Q. These trees were twelve feet from the high water mark of the river?

A. No, from the water mark at the time—from the actual edge of the water at the time that happened.

Q. What time of year did you take that?

A. This was in October.

Q. Low water then?

A. Some ice on the bank. It was impossible to determine exactly where the water level was at that time.

The Court: I will sustain the objection to it.

Direct Examination (Continued)

By Mr. Taylor:

Q. Now, Mr. Ragle, from your examination,—no, pardon me; just withdraw that question. Mr. Ragle, I hand you Defendants' Exhibit "A", and ask you if that is similar to the appearance of the hole—the two holes that you examined when you were at the Waxberg place?

A. The arrangement of the materials is similar; yes.

Q. Could you state from the photograph what the various strata is that is laying here?

A. It would be difficult to identify it positively from [191] the photographs what the strata were.

Q. And I hand you Defendants' Exhibit "B", Mr. Ragle, and ask if that is similar to the material that you found in the holes that you examined?

A. Very similar.

(Testimony of Richard Ragle.)

Q. Now, from your examination of that land in question, of the holes and upon exhibits "A" and "B" of the Defendants', would you state whether or not that ground occupied by Birklid and Waxberg, which extends from the back of the Nordale building to the Chena River, is a natural fill or is an artificial fill?

Mr. Johnson: Well, we object to this, if the Court please, calling for a conclusion, the proper foundation for which hasn't been laid. Incompetent, irrelevant and immaterial.

Mr. Taylor: Expert opinion, your Honor.

The Court: Well, objection overruled.

A. I would state, in my opinion, that there is an artificial bearing in thickness from two to eight feet, resting between the river bank and the back of the buildings that front on First Street. That the materials present in their present arrangements could not have been deposited by a natural agency.

Mr. Taylor: You may take the witness.

The Court: Just a minute.

Examination by the Court

By Judge Pratt:

Q. The two holes that you examined, which were South of the Birklid building, is that right?

A. That is right, sir.

Q. That is, they were in between the Waxberg and Birklid building and the other building—the old building? A. That is correct.

(Testimony of Richard Ragle.)

Q. Then, what other hole was there that you examined?

A. The whole front of the river bank.

Q. The whole front?

A. The front of the river bank from just East of the Riverview Hotel.

Q. Fairview?

A. Fairview Hotel, where the erosion fence is built, along the bank of the river. From that point over to the boundaries of the ball park.

Q. Did you—You didn't examine any more holes on the property in question here, did you?

A. No sir.

Q. You are just making your judgment from the river bank, itself?

A. From the erosion cuts.

Q. And these two holes in between the buildings?

A. That is correct.

The Court: That is all. [193]

Cross-Examination

By Mr. Johnson:

Q. Mr. Ragle, you said that these two holes, which you examined—that you say now were South of the Waxberg and Birklid building, had been dug by someone else, had they? A. That is right.

Q. Do you know when they had been dug?

A. I have no personal knowledge of when they were dug.

Q. The first time you saw them, they had already been dug, is that correct? A. That is correct.

(Testimony of Richard Ragle.)

Q. And you have no knowledge of who dug them, or when they had been dug, is that correct?

A. That is correct.

Q. And you say these holes were about two feet deep?

A. As nearly as I can remember it at the present time.

Q. It is your best recollection that they were not any deeper than that, from the surface?

A. Very little, if any, deeper.

Q. Now, I believe you made the statement that, in your opinion, the river—the Chena River at this particular point, had migrated from South to the North within the immediate geologic past. That expression is slightly beyond me. I mean, would you mind explaining what you mean by the "immediate geologic past"? [194]

A. Perhaps I can clarify that statement. The geologic period classified as recent includes a period of time since the end of the Tertiary period approximately forty million years ago.

Q. Then you think that this river has migrated —how far would you say it has migrated within the past forty million years, from the North to the South, or from the South to the North, rather?

Mr. Taylor: Just a moment. Did you say forty years?

Mr. Johnson: Forty million years is what he said the glacial period was. I am trying to find out.

Q. Do you have any idea how far this migration has been during this period?

(Testimony of Richard Ragle.)

A. It wouldn't be possible to discuss it within those terms. The definite geologic recent period includes a very long period of actual years; more than encompasses the entire life of the Chena River.

Q. Well, I am trying to find out, or trying to get the idea in language that I can understand as a layman. Now, the testimony previously has been that the channel of the Chena River at this point has moved from the North—or, rather, from the South to the North within the past 40 years, and the varying distances, but would you say that, knowing the rivers of Alaska, I assume, as a geologist you have studied the rivers of Alaska and know their natural habits and tendencies? [195]

A. Definitely.

Q. And they build up sand bars or tear down sand bars and move their banks quite extensively over a period of time, but it wouldn't take forty million years, would it, to move the Chena River from a distance of fifty or sixty feet, the channel; do you think that that could happen within a period of forty years?

A. Your question is geologically difficult to answer because it encompasses a big period of time. If you will permit me to state it in my own words, perhaps I can answer the question to your own satisfaction?

Q. I hope you will do that. I am not trying to tell you what to say.

A. The period of time involved in the development of the present Chena channel has suffered from

(Testimony of Richard Ragle.)

the Tanana River Valley, if you understand me, is probably about ten thousand years. And during the recent portions of that time, the Chena has been in the process of establishing a channel which has, in general, tended to migrate from South to North, but within certain portions of the river a different direction has been temporarily maintained. In this particular portion the average movement of the structure of water between the bend of the river that erodes into the bank in Graehl and again just in front of the N. C. Company, has [196] been, as a whole, from Southeast toward Northwest, and the greatest movement has been fairly accurately estimated on the basis of dentacronology, is the name of it.

Q. Just what do you mean by that?

A. The rate of the movement of the river has been estimated on the basis of the length of life of the trees now growing on the river banks.

Q. Well, you found no trees on the river bank involving the property in question?

A. Not in that particular piece of property, but on other portions of the river channel; yes.

Q. Now, will you look at Plaintiffs' Exhibit "H" and Plaintiffs' Exhibit "I"? Plaintiffs' Exhibit "H" is a photograph of the waterfront taken in 1905. And Plaintiffs' Exhibit "I", is a photograph of the same waterfront taken ten years later, in 1915. Can you notice any difference in the left bank of the Chena River, as shown by those two

(Testimony of Richard Ragle.)

pictures? By the left bank, I mean downstream. That would be the South bank of the Chena River. Is there any indication to you from an examination of those pictures that there has been a movement of the channel from South to North, leaving exposed on the South a bank or . . . (interrupted).

Mr. Taylor: Just a moment, I object to the question until called to the witness's attention that one of those pictures was taken in October, and one in June in very different [197] stages of the water.

Mr. Johnson: The one taken in—I don't know which one was taken in June.

A. Your Honor, I don't have any—I don't find any land marks that will permit me to assume that this represents the same portion of the river. These two photographs.

Q. Well, I can show you two land marks that are identical. You see this "X" right there (indicating)? The coincides with this "X" that is marked on this photogrph (indicating). This is what is now known as the Nordale building—this building here (indicating), and that—this—if I recall, that is the "X" which marked the saw mill that formerly stood on what is now known as the Nordale property, and where this building is now located. You see that "X" there (indicating)? That is the present Nordale building, and this saw mill stood on that same lot. Here is the slip of the saw mill. This structure that goes down toward the water, known as the slip, up which they dragged the

(Testimony of Richard Ragle.)

logs into the mill. That corresponds to this area of the river.

A. Would counsel repeat his question?

Q. Well, from the examination of those two pictures, or a comparison of the same location on each picture, can you tell whether or not the channel of the Chena River has, during the space of the ten years intervening between those pictures, migrated from the South to the North, leaving exposed [198] on the South bank, dry land or a bank which previously wasn't there?

A. I would have to state that approximately equal amounts of dry land are exposed in the picture of October, 1915, on each side of the stream channel that are covered in the picture of June, 1905. That gravel bar is exposed on the North side and a mud slope on the South side. There doesn't appear to be any identifiable indication of the movement of the river channel, itself, merely a change in the water level.

Mr. Johnson: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mr. Ragle, calling your attention to the picture of October, 1915, and to the building marked down here with an "X", which has been identified as the Nordale building, lying just South of the Waxberg and Birklid building, would you state from your examination of that ground down there that the river could have possibly deposited sedimen-

(Testimony of Richard Ragle.)

tary matter from 1915 to have built that up to the height that the land is at the present time?

A. I am afraid that I couldn't answer that question directly, because there is no basis for giving the answer. Under normal circumstances it would seem rather unlikely.

Q. Now, Mr. Ragle, would the vegetation along a river bank give [199] you any definite indication as to how long that bank had been there?

Mr. Johnson: If the Court please, we object to that as being incompetent, irrelevant and immaterial. Not within the issues.

The Court: He seemed to find the bank significant in relation to the facts in this case.

Q. Mr. Ragle, would the bank of the river twenty feet from the side line of the property upon which Mr. Birklid and Waxberg have their building be indicative of the conditions that prevail on the river bank of their property?

A. Certain indications that would be present on the river bank would be indicative of conditions adjacent to that point.

Q. And would vegetation that would be twenty or thirty feet away from the side line give you just a clear idea as to conditions that prevails upon their ground?

A. It would establish certain factors; yes.

Clerk of Court: This is Defendants' Identification Number "4"—"D".

Mr. Taylor: If the Court please, I would like

(Testimony of Richard Ragle.)

to offer this in evidence. The large piece, which I think he has laid a foundation for.

Mr. Johnson: We object, if the Court please, on the grounds it is incompetent, irrelevant and immaterial. No proper [200] foundation and not within the issues joined by the pleadings.

The Court: What is the purpose? What are you expecting to prove?

Mr. Taylor: He testified that the vegetation—trees on the bank of the river near to the bank of the property in question, is an indication of a general condition around there which would establish the terrain of the land in question as to how long that bank had been there.

The Court: What do you expect to prove with that tree, there?

Mr. Taylor: I expect to prove that by Mr.—

The Court: What age would you expect to prove that tree had?

Mr. Taylor: Twenty years. Twenty-thirty years.

The Court: You are supposed to take what your witness would testify to. Have you talked to him?

Q. Mr. Ragle, have you been able to establish the age of this tree?

A. I had better report to you that I submitted a report that contained my findings as to the age of that tree.

The Court: You submitted a report?

A. To Mr. Taylor.

(Testimony of Richard Ragle.)

The Court: You got an opinion on it from somebody, did you?

A. No, I counted the years of growth indicated by the annual [201] rings of the tree, myself.

Q. And you made that report in that finding, Mr. Ragle? A. Yes, sir, I did.

The Court: And who did you make the report to?

A. To Mr. Taylor.

Q. Do you have a copy of that report with you, Mr. Ragle?

A. I don't have a copy with me; no.

Mr. Johnson: If the Court please, I still don't see what all this has to do with the issues.

The Court: I think it all depends on the tree, whether it has any relevancy or not. And then, there is a question, again, to the court, of the river; that might not have been the course of the river, and as it came south.

Q. I hand you a report that you prepared, Mr. Ragle. Is that the report that you prepared, Mr. Ragle? A. That is correct.

Q. And does that contain your findings of the conditions surrounding the property that is in issue here? A. That is correct.

Q. And does that report state the age of this—Plaintiffs'—or, Defendants' Identification "4"?

A. It does.

Q. What is the age as shown on your report as to that identification?

(Testimony of Richard Ragle.)

A. The report states that the sapling shows an age of not [202] less than twelve years.

The Court: When did you take your sample?

A. Last Fall.

The Court: Last Fall?

A. October.

The Court: October of '48?

A. That is correct.

Mr. Taylor: I would like to offer that in evidence, your Honor.

The Court: I will permit it. It may be admitted.

Clerk of Court: Defendants' Exhibit Number "4."

(Defendants' Identification "D" admitted in evidence as Defendants' Exhibit "4.")

Mr. Taylor: I believe that is all, unless Mr. Johnson has any.

Recross-Examination

By Mr. Johnson:

Q. Mr. Ragle, one question. This sapling you have just testified to, you say you found that back twenty feet from the water line—some such a matter?

A. It is growing directly on the little cut bank on the edge of the present channel. Now, the water line at that particular time wasn't determinable because the water had already begun to freeze and there was ice out several feet from the bank. [203]

Q. Well, how far away from the Nordale water-line would you say it was?

(Testimony of Richard Ragle.)

A. From the mean high water line almost directly above the water. From the lowest water of last Fall, approximately twelve feet.

Mr. Johnson: All right, that is all.

Mr. Taylor: That is all.

(Whereupon, Mr. Richard Ragle was excused as a witness and left the witness stand.)

Mr. Taylor: If the Court please, I would like to excuse Mr. Ragle as he is very busy at the University, unless Mr. Johnson wants him held?

The Court: Very well, he may be excused. Recess until 2:00 o'clock.

(Whereupon, at 12:10 o'clock p.m., Court was recessed until 2:00 o'clock p.m.)

Be It Remembered, that at 2:00 o'clock p.m., the second day of trial of the above-entitled cause was continued, the parties above mentioned again appearing in court in person and by their attorneys of record; the Honorable Harry E. Pratt, District Judge, presiding;

And Thereupon, the following proceedings were had:

The Court: Counsel ready to proceed?

Mr. Taylor: Yes, your Honor. [204]

Mr. Johnson: We are ready, your Honor.

Mr. Taylor: We will call Mr. Waxberg.

A. E. WAXBERG

one of the Defendants, having previously been duly sworn as a witness in his own behalf and temporarily excused for the testimony of Mr. Ragle, was recalled to further testify on direct examination, as follows:

Direct Examination
(Continued)

By Mr. Taylor:

Q. Mr. Waxberg, at the time that you started to build your building on the land that is in controversy here, did you run across any drains in the ground there, or on top of the ground?

A. No, not near the building. There is one out on, I would say, ten feet out into the street, according to sighting down Lacey Street.

Q. Was that a supposed drain?

A. Well, the one end; yes. It was buried into the ground. Only the outlet was exposed.

Q. And was there water coming out of it?

A. Occasionally there was; yes, sir.

Q. Now, what, if anything, did you do with that drain?

A. I extended that drain clean on out to where it would drain into the river, because we wanted to put in a little fill in there so we could drive our car up to the building. [205]

Q. How big a drain was it?

A. Made out of two by ten and two by twelve.

Q. And how much of an extension did you put onto the drain? A. About eighty feet.

(Testimony of A. E. Waxberg.)

Q. Did anybody connected with the City say anything to you about that drain, either—

Mr. Johnson: We object to that, if the Court please; incompetent, irrelevant and immaterial. Purely hearsay.

The Court: Objection sustained.

Q. I believe Mr. Wehner testified yesterday about this drain.

The Court: It is immaterial. I will sustain the objection.

Q. Now, do you know Mr. Wehner?

A. Yes, I do.

Q. And how long have you known him?

A. Oh, I have known him ever since I have been in town—twelve, thirteen years. It will be thirteen years in July.

Q. And what is the nature of that acquaintance?

A. Well, he is always interested in building and one thing and another and that is the line of work I have followed, and I have got acquainted with him over at the N. C., when I was putting up the N. C. Caterpillar building, and from time to time when we were working down at the Lathrop building he used to come down and talk about this, that and the other thing. [206]

Q. And did he talk to you about the drain on Lacey Street? A. Yes, he did.

Q. And when was that?

Mr. Johnson: Well, if the Court please, we object to this; being incompetent, irrelevant and immaterial. Not being connected with the issues.

(Testimony of A. E. Waxberg.)

The Court: Objection sustained.

Q. Now, calling your attention to Plaintiff's Exhibit "L," at the time that that picture was taken, Mr. Waxberg, how much water did you have in your building?

A. Well, it looks like it was just about level with the floor. However, it is hard to decide right now from this picture. We had 16 inches of water over the entire floor in our shop.

Q. And at that time was any other buildings in that vicinity down there flooded and under water?

A. Well, the building belonging to the Army down there was.

Q. And farther to the East did you notice any of the buildings down Noble Street?

A. Yes, there was water all the way up Wendell Avenue.

Q. Now, how long did the water remain standing in your building before it receded?

A. I would say about a week.

Q. And after it had receded from there, how much sediment was [207] left on the floors?

A. Well, I didn't measure it, but it couldn't have been much. It couldn't have been a quarter of an inch, even, because we swept the floor and scrubbed it off.

Q. All right. Now, calling your attention to Plaintiffs' Exhibit "M," which represents certain mud, is there any indication of that sediment on the land at the present time?

(Testimony of A. E. Waxberg.)

A. No, there isn't.

Q. After it dried what became of it?

A. Well, it washes down into the ground, I imagine, from the rains and it just disappears.

Mr. Johnson: Well, if the Court please, we object to what he imagines and move to strike that answer as immaterial.

The Court: It may be stricken.

Q. Where did it go? Where did that sediment go?

A. Well, it just disappeared. Where it went to I don't know. It is not evident now.

Q. And did that raise the level of the land at all, Mr. Waxberg? A. No, it didn't.

Q. And I believe—did you make any inspection of that particular place yesterday, in regard to it?

A. Well, we have been crawling underneath the building off and on and—not yesterday, I didn't, but I have been under there several times. We store things in there and the skids are still under the building that were there when we moved [208] the building over, and there is no deposit of any amount on the skids now.

Q. Do you remember going through, down to this place yesterday with me? A. Yes.

Q. And looking at this particular part back here where the grass was, A. Well, yes.

Q. And was there anything showing whatsoever of this sediment in that?

A. No, there wasn't. It was all covered with

(Testimony of A. E. Waxberg.)

grass. In fact, we had to rake it some to—there is lots of fellows coming around there smoking cigarettes and there is a lot of grass in there (interrupted).

Mr. Johnson: Well, if the Court please, I don't see that that has any relevancy and we move to strike it. Not responsive to the question.

The Court: Well, it may be stricken.

Q. Was the grass hidden by this sediment?

A. No.

Q. That is the reason you had to rake it so it wouldn't—

A. That is right. It might catch fire.

Q. Now, Mr. Waxberg, since you have been down there what—has there been any dumping of refuse or garbage down at that part of town? [209]

A. Yes, there has.

Q. Whereabouts?

A. All along the bank from the Fairview on up and even at the end of Lacey Street there has been dumping.

Q. Who did that dumping?

A. Well, I don't know. The only one I noticed here the other day, Mr. Wehner has been cleaning the streets and he dumped the dirt at the end of Lacey down below our shop. It is still evident.

Q. Was that rubbish dumped on the ice, Mr. Waxberg?

A. Well, it was dumped on the bank and some of it goes onto the ice and some of it doesn't.

(Testimony of A. E. Waxberg.)

Q. Did you ever go over to the place that is called the Children's Playfield, and see any sawdust there? A. No, I haven't.

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Johnson:

Q. Mr. Waxberg, you say you have lived in Alaska about thirteen years, is that right?

A. It will be thirteen years in June; yes.

Q. Has that all been in Fairbanks?

A. Yes.

Q. Now, I believe this morning in response to a question from Mr. Taylor you said that you had had no trouble in moving [210] this building of yours over onto this property that you now occupy. Isn't it a fact that before you moved the building you received a letter from me cautioning you against moving that building?

Mr. Taylor: If the Court please, we object to the question; improper cross-examination. Our question along the same line was objected to and sustained.

The Court: Objection sustained.

Mr. Johnson: If the Court please, they have admitted that in their pleading, anyway, as far as that goes. Because they have admitted the allegations of Paragraph III of the Complaint—or rather, Paragraph IV of the Complaint, which alleges that—Paragraph IV alleges that the Plain-

(Testimony of A. E. Waxberg.)

tiffs have demanded of the Defendants the possession of said premises so unlawfully entered upon by the Defendants and served notice upon the Defendants not to trespass, but notwithstanding this, the Defendants refused, etc. The allegations of that Paragraph, your Honor, are admitted.

The Court: Then they aren't at issue. There is no issue there at all.

Mr. Johnson: Very well. I just thought, however, he had been asked the question this morning as to whether or not he had had any trouble and he said "no."

Q. Now, Mr. Waxberg, you testified about a hole that you dug in front—I think you said this was dug in front of your [211] building? A. Yes.

Q. Now, will you look (interrupted).

The Court: Will you bring out—where is "front"?

Q. I mean by "front," the east side of your building, facing Lacey Street? A. Yes.

Q. That is what I meant by the "front." Is that what you mean?

A. That is what I mean; yes.

Q. The east side of the building is where you dug this hole for the oil tank, isn't it?

A. That is right.

Q. Now, will you look at Plaintiffs' Exhibit "G." That shows the east side of your building, doesn't it, facing Lacey Street?

A. That is right.

(Testimony of A. E. Waxberg.)

Q. Will you indicate—can you tell on that Exhibit about where you dug this hole?

A. Well, it is right under this window (indicating), alongside the door. It is right where these saw horses stand, maybe a little further back, because they were quite a distance from the building.

Q. Would that be under the window to the right of the door, going into the building?

A. To the right of the door going into the building. [212]

Q. As shown on this Exhibit?

A. That is right.

Q. Exhibit "G." Now, do you know how far it is from the front of your building—that is the front, the east side of your building—how far it is from there to the west edge of Lacey Street? In other words, how far back from the west edge of Lacey Street does your building set?

A. Well, as near as I can—I never did measure it or have it surveyed, but just from general observations, sighting down through, according to the Lathrop building, which is in line with the Lacey Street, I would say it would be eight or nine feet.

Q. The Plaintiffs' Exhibit—oh, this is "J." I made a mistake. This is "G." The picture is "J." Plaintiffs' Exhibit "G," which has been introduced in evidence, shows your building about six or seven feet from the edge of the street, according to this scale of one inch to fifty feet. It is about 5/16 between the two, I think. That would be six or seven feet, is it not?

(Testimony of A. E. Waxberg.)

A. I would say that location would be rather rough; also, because it would be hard to tell on a—from my experience—on a map of an inch to fifty feet.

Mr. Taylor: However, I object to it upon cross-examination upon the grounds that the plat would speak for itself, and the Plaintiff failed to put in any proof as to the distances [213] whether the map was drawn to scale, or not.

Mr. Johnson: Oh, yes, the Court asked that question to the witness Linck, and the witness testified it was drawn to scale.

The Court: Objection overruled.

Q. Now, you say that this hole which you dug was about four feet wide and I think you said six feet long?

A. Six or seven feet long, yes. Enough to bury a fifty-gallon drum.

Q. And about five or six feet deep, is that right?

A. Well, it is all of six feet deep.

Q. Now, how does that run—does it run parallel with the building? That is, the length?

A. Parallel with the building; yes, sir.

Q. And how far away from the building?

A. It is right up against the building.

Q. And I take it when you dug out this hole, which is, as you say, four and a half feet wide and six feet long and six feet deep, you piled all the dirt to one side, was that it?

A. Not all of it; no. You couldn't put it all in

(Testimony of A. E. Waxberg.)

one place. You flowed it on both sides and in front of the hole.

Q. But all of this accumulation was on the one spot, is that it? That shows all of the accumulation that came out of the hole? [214]

A. No, this is just the way it is thrown up there. If you will note, the tire rim shown in the hole is not shown in that photograph.

Q. I understood you to say—

A. That is some of it.

Q. This is a pile of dirt that was thrown out of the hole?

A. That is just the way it was thrown out of the hole. However, it isn't all there.

Q. You don't have any other pictures?

A. There is a picture there showing the tire rim. It wasn't dug up.

Q. You don't know anything about the action of the Chena River with reference to the channel migrating from south to north, do you? In other words, you haven't been here, only 13 years?

A. No, sir, it has been the same the last 13 years, at least, since I have been here, because they always have a road across there from time to time.

Q. And that hasn't changed noticeably since you first came here, has it? A. No.

Q. Now, you say that you recently examined the ground around your building, as shown by Plaintiffs' Exhibit "M." You say that you recently examined the ground around that portion of your

(Testimony of A. E. Waxberg.)

building and found no evidence of sediment, is that right?

A. Not in this particular spot, because if I remember right, this ground is filled in now because we hauled—we hauled about three or four hundred yards of gravel in there and filled along this platform, but anything back of the building and underneath the building—

Q. Well, that is—that abutment, or this post, here, is the southwest corner of your building?

A. Southwest corner?

Q. Yes. According to the testimony of the photographer who took the picture. Have you looked at that? You say you looked around that area recently?

A. Well, sure, I have been around there.

Q. And you saw nothing but grass?

A. Not around this particular spot, because there, if I remember right, there is ice and snow underneath the building yet.

Q. That is what I am getting at. Since that picture has been taken the ground has been covered with a considerable amount of snow all during the winter, has it not? You said just recently you examined the ground and (interrupted).

A. (Interposing): Underneath the building, yes, I have. But this particular corner I haven't looked at that; no. Right behind the building the grass is growing there and it is clear. [216]

Q. Now, I believe you said that after the flood

(Testimony of A. E. Waxberg.)

water receded, you had about 16 inches of water in your building, is that right?

A. That is right.

Q. And that seeped in, I suppose, through the cracks around the building. In other words, you didn't let it in?

A. Oh, we had to let it in. We had to work there all the time to save our material. We had the waters open—the doors open letting the water through and when the water quit raising we closed the doors. We had the doors closed.

Q. And it lowered—when it began to go down, it lowered 16 inches in your building before it came to the floor? A. That is right.

Q. And in that 16 inches it deposited, I believe you said, a quarter of an inch?

A. I didn't measure it. We swept it out with a broom. I don't know whether you can sweep a quarter of an inch of dirt with a broom or not. It is just a guess, more or less.

Mr. Johnson: That is all.

Mr. Taylor: That is all.

(Whereupon, Mr. A. E. Waxberg was excused as a witness and left the witness stand.)

Mr. Taylor: Call Mr. Rothenberg.

RICHARD ROTHENBERG

called as a witness on behalf of the Defendants, was duly sworn and testified [217] as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Richard Rothenberg.

Q. And you have resided in Fairbanks?

A. Yes, sir.

Q. And how long have you resided here, Mr. Rothenberg? A. Since 1903 in Fairbanks.

Q. And has that been continuous?

A. Well, no. No. No. Off and on. You see, some stampedes happened during that time.

Q. But you have made your headquarters here, have you not, most of the time? A. Yes.

Q. Now, calling your attention to the lower end of Lacey Street, Mr. Rothenberg, are you familiar with it, a condition of that part of the town along 1904 and '05?

A. Yes. There was no lower end of Lacey Street. Lacey Street stopped at Front Street.

Q. At where?

A. It stopped at Front Street—the first street—First Avenue.

Q. And there was no way of getting beyond there, then, Mr. [218] Rothenberg? A. No.

Q. Were you here at the time the saw mill was operating on the corner of Lacey and First Avenue?

A. Yes, I worked at the next saw mill to it.

(Testimony of Richard Rothenberg.)

Q. In which direction?

A. The mills—Joe Hanson's mill.

Q. Was that east or west?

A. No, that was above Parker's mill.

Q. Over on what is known now as the Children's Playground? A. Yes.

Q. What did the mill you were working in do with their slabs and sawdust?

A. Well, the slabs they were sold and we sawed shingles out of the slabs and the sawdust, we used a lot of sawdust for fuel and for insulation, but the rest of it was piled up on the bar and rode into the river.

Q. Now, would you kindly give, to the best of your ability, a description of the river along there, and especially in relation to how they got their logs into the mill of Parker's?

A. I didn't quite catch that, sir.

Q. Just describe the conditions in front of there—I guess it would be in front of the mill on the river side?

A. There was a slough. There was a slough between the river and the bank of First Avenue, and there was a big bar [219] where the playfield is now. There was a big gravel bar there.

Q. And where did they bring the logs into?

A. Well, through that slough.

Q. And was that—did that slough run off of the main part of the river, back up there (indicating)?

A. Oh, yes.

(Testimony of Richard Rothenberg.)

Q. And how long did that slough remain there, Mr. Rothenberg?

A. I couldn't say that. I didn't—can't testify to that, sir. I know that has changed considerably there, but I don't know how it has. The change came gradually, you know, and I couldn't specify the time.

Q. Did you notice any—ever notice, at any time, of that slough being filled up?

A. Oh, yes. Yes.

Q. And what was it filled up with?

A. There was evidently an obstruction on the course—of course the sawdust we put in there, and the sawdust of Fred Parker—it caused the obstruction, of course, and whenever the Tanana would get high, it would carry a lot of silt, you know, and of course it kept on filling up.

Q. Did you ever notice some logs losing their bark in there, getting bark, and also help filling that place up? A. Oh, naturally.

Q. And how long did you work in that saw mill, Mr. Rothenberg? [220]

A. I worked there one season. In 1904.

Q. And after you quit working for the saw mill, how often did you go down that part of town, Mr. Rothenberg?

A. It is a hard question to answer.

Q. Just intermittently, was it—maybe no specified time that you might be down there at fairly long intervals apart?

(Testimony of Richard Rothenberg.)

A. Well, from 1912 or 1913, rather, I was here in town. Well, I made it my headquarters and I went down there quite often.

Q. And 1912—that would be 8 years after you quit working in the saw mill? A. Yes.

Q. Now, when you went down in 1912, did you see much of a change in that slough, Mr. Rothenberg?

A. Yes, there was quite a bit of silt on the bars. There wasn't much of a slough left.

Q. Did you, at any time, ever notice any other thing in that slough besides silt? Any refuse of any sort in there?

A. I might, but I couldn't testify to that. You know they dump garbage all over the town, so they might have dumped it in there. I don't know.

Q. You, yourself, never?

A. No, no.

Q. And I will show you a picture here, Mr. Rothenberg. You heard the testimony here, did you, about these—this hole? [221] A. Yes.

Q. That is Defendants' Exhibit "2."

A. Yes, it looks pretty natural, with all this refuse in there.

Q. And I hand you Defendants' Exhibit Number "3," and call your attention to an iron rim down there. Did you ever see anything like that flowing in the Tanana River, Mr. Rothenberg?

A. They are roots, aren't they?

(Testimony of Richard Rothenberg.)

Q. According to the testimony, this is an iron rim of a car. A. No, that wouldn't float.

Q. And you say it was quite a habit of dumping debris and refuse along the river in those days?

A. Yes, sir; yes, sir.

Q. You knew that was a general condition, although you didn't actually see any of it dumped, yourself?

A. No, I never seen anybody—any actual dumping, but there was a lot of people complaining about having their garbage dumped all over, you know.

Mr. Johnson: Well, if the Court please, we object to that answer and move to strike it upon the grounds it is not responsive to the question.

The Court: It may be stricken.

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Johnson: [222]

Q. Mr. Rothenberg, you have mentioned a slough which you say was somewhere along the property that is in question here. Will you look at this map, which is Plaintiffs' Exhibit "F." Now, here is the Chena River bank (indicating), and here is Lot 6 in Block 4. This is the lot that is in question here. Now, you say the saw mill—this is where Mr. Parker had his saw mill (indicating). Now, where was your saw mill, the one you worked in, with reference to Parker's mill? A. Just above it.

Q. Was it up here somewhere (indicating)?

A. Just above it.

(Testimony of Richard Rothenberg.)

Q. Up here, on the playfield?

A. Just close to the playfield, just about where the playfield is now.

Q. Well, the playfield is along in here now (indicating), something like that?

A. There were two bars there. There was a bar close here (indicating), and a slough in there, and another bar on the outside.

Q. Now, this slough that you talk about was right in here (indicating)?

A. Just about; yes, sir.

Q. I see. All right, that is all I wanted to know.

The Court: Can't it be marked where he said the slough was? [223]

Q. Will you mark here with a pencil where you say the slough was? You said it was right in here (indicating)?

A. Well, you know, 45 years was a long time ago.

The Court: Will you just describe that instead of marking the official record? Just describe it so I can understand it.

Mr. Johnson: Well, he indicates, your Honor, the Southwesterly portion of Block 3.

A. The mill would have been just about here (indicating), because when I was sawing and planing, I could see the people building their houses on Wendell, you see.

Q. Well, then, the mill was facing Wendell Avenue?

A. No, the mill—the end of the mill with the saw,

(Testimony of Richard Rothenberg.)

it would be facing Front—First Avenue, and——
(interrupted).

Q. Well, here is Wendell Avenue (indicating).

A. Yes, I know. But it would be facing this way, towards Wendell Avenue.

Q. Let's see, towards the South?

A. Yes, towards the South.

Q. And that was about——

A. Just about, I should judge——(interrupted).

Mr. Taylor: If the Court please, I am going to object to this cross-examination because the question directed to the witness were as to the slough back of Parker's mill.

Mr. Johnson: He is trying to identify it by description, [224] rather than by marking this map.

A. No, I couldn't swear to that, anyway. It is too long a time.

Q. But the slough you speak of was right behind the mill that you were working in? A. Yes.

Q. And that was in a portion of what was then known as Block 3 of the Town of Fairbanks? This is Block 3 (indicating). Isn't that right?

A. I don't know. I couldn't say that, sir.

Q. Well, here is Block 3 (indicating)?

A. You see, nothing interested me in this case at all, and nothing ever did. All I can say is from memory.

Q. I am just asking for your best recollection, is all. Mr. Rothenberg, I believe you said that the change in the Chena River has come gradually, is that correct? A. Yes.

(Testimony of Richard Rothenberg.)

Q. Now, just what do you mean by "the change"? Do you mean that the channel has moved, or—?

A. Well, any obstruction will gather silt and change the river. In fact, some of the islands will be changed from one place to another, you know, and that might happen in one season, but, as I say, I never was interested in the change of the river down there, you know.

Q. Have you noticed any change in the channel moving from the [225] South to North; that is, moving—the bank cutting down in the Slaterville and Graehl side, and building up on the South side of the river—on the left bank?

A. I notice the current changing—the current changing, but I don't—

Q. Well, how did the current change?

A. Well, I can't explain that, because that is—somebody else will have to explain why the current changed. The current used to be more over towards Graehl, and then on this side. You see, this side sort of made an eddy.

Q. And that eddy filled in gradually, didn't it?

A. Yes sir; yes sir.

Q. And then the channel has moved out from where that eddy used to be?

A. Yes sir; yes sir.

Q. And the bank has—the left bank of the river—Chena River—has been extending outward, or to the North, hasn't it? A. Yes. That is right.

Mr. Johnson: That is all.

(Testimony of Richard Rothenberg.)

Redirect Examination

By Mr. Taylor:

Q. Mr. Rothenberg, in response to my questions you stated that you remembered the slough that was down in front of Parker's mill?

A. Yes; yes. [226]

Q. And there was also a slough in front of the mill you were working in, too?

A. Yes, it was quite cut up there. There was several bars. The playfield, itself, as I remember, consisted of two bars, or more than two bars, you know.

Q. One on each side? A. Yes; yes.

Q. Did those bars kind of run out into the streamway? A. Yes, came out from above.

Q. And the question, that I propounded to you, referred to the slough in front of Parker's mill, is that right?

A. Yes. Well, it is a continuation of it, you see.

Mr. Taylor: I see. That is all.

Recross-Examination

By Mr. Johnson:

Q. Well, now, Mr. Rothenberg, this slough you say was in front of Parker's mill, was also what you call the eddy, wasn't it? A. Yes.

Q. Where the eddy was?

A. Yes. The eddy was by Parker's. We didn't have it in the upper mill.

Q. But you had the eddy at Parker's, and the eddy was right in the river? A. Yes. [227]

(Testimony of Richard Rothenberg.)

Mr. Johnson: That is all.

Mr. Taylor: That is all.

(Whereupon, Mr. Richard Rothenberg was excused as a witness and left the witness stand.)

Mr. Taylor: I would like to call Mr. Norlin. Albert Norlin.

ALBERT NORLIN

was called as a witness on behalf of the Defendants, and after being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Albert Norlin.

Q. And where do you reside, Mr. Norlin?

A. Fairbanks. 1215-3rd.

Q. And how long have you lived at Fairbanks?

A. I have lived since 1910 in Fairbanks and around the Creeks, you know.

Q. How—what is your occupation, Mr. Norlin?

A. Well, I am a miner.

Q. And are you familiar with the property at the Northwest corner of the intersection of First Avenue and Lacey?

A. Where the saw mill was?

Q. Where the saw mill was? [228]

A. I don't know where the saw mill was. It was before my days.

Q. Do you know Mr. Waxberg?

(Testimony of Albert Norlin.)

A. I know him; yes.

Q. Do you know where his carpenter shop is located? A. Yes sir.

Q. At the foot of Lacey Street?

A. Yes sir.

Q. Now, did you ever have occasion to go down to that part of the town in the years past?

A. Well, I have been down there. It was a good while.

Q. And when you first went down there did you remember—or do you remember the condition of the slough or the condition of the ground around there?

Mr. Johnson: Well, if the Court please, there is no testimony there was a slough there, yet. I think he should lay the foundation.

Q. What was the condition of the land that is now occupied by Mr. Waxberg?

A. At the time I was there—I was there one time from 1920 to '25 or '30, and there was not much of anything. A few wheels and rubbish and trash and stuff that was thrown on the bank. Kind of a hole, and anybody threw things there.

Q. You mean kind of a hole? [229]

A. There was a hole there right back of Pete Manlove's—Vachon Building in the back end. In the front Vachon had a kind of a fur store. He had his storehouse. In the back he used to keep dogs back there in the back end of the Vachon building, and sometimes he had them up above on

(Testimony of Albert Norlin.)

the floor, and sometimes underneath and sometimes he tied the dogs outside where lots of dog mushers tied the dogs out there.

Q. And this hole that you mentioned about—did that run from the Nordale building back to the river?

A. No, it run from the Lacey Street towards—up—or, downstream.

Q. Downstream. And how deep was that?

A. Oh, I would judge it was six—five, six feet. It was kind of a sag, you know.

Q. And what had that been filled with, Mr. Norlin?

A. Well, it was filled with trash, cans and several cases; I seen a fellow—Kehoe—that fellow sold out to Wehner, he sold his business out to Mr. Wehner—he threw a lot of stuff in there.

Q. Was that used as a kind of a dump down there?

A. I don't think they were supposed to dump there, but they did, just the same.

Q. And during your trips down there, had you seen that condition of debris and refuse down there?

A. Well, I hadn't been there for a long time; I had been around the creeks, but the time I was there they was filling up there all the time.

Q. And when did you go to the creeks, Mr. Norlin?

A. Oh, I went with the F. E. Company about in 1930.

(Testimony of Albert Norlin.)

Q. And about what was the last time you were down there, prior to 1930?

A. You mean down to Birkld's?

Q. Down to Birklid's?

A. Oh, I have been down there several times. Last Summer I have been down there. I have been down there is last Winter.

Q. No, I mean prior—before you went to work for the F. E. Company, Mr. Norlin? Was you down there quite often just shortly before you went to work for the F. E. Company?

A. No, I was on the creeks. I wasn't down there.

Q. When did you come back to town to remain permanently here?

A. Well, I have been back about four years, now.

Q. And would you come in off and on; stop here in the winter?

A. Off and on. In and out.

Q. And did you ever have an opportunity to observe that ground there where Mr. Waxberg has his shop now?

A. Yes, I have seen it; yes.

Q. And did you see any change in the contour of the land where his shop is, between there and the river? [231]

A. Well, it had filled in some.

Q. It had filled in some more?

A. Umhummm.

Q. And what with?

A. Well, I don't know. It must be silt from

(Testimony of Albert Norlin.)

the river. I don't know whether there was any garbage dumped after that. I don't know that, but while I was there, garbage was dumped. It could be silt from the river—high water.

Q. How many years was it you were there, Mr. Norlin?

A. At the Nordale? I was on the old place on Front Street five years.

Q. And when did you quit there?

A. '25, when the hotel burned. '25. Something like. I worked seven years at the old one.

Q. And during that time you had occasion to observe that particular area quite often?

A. Every day when I worked on Front Street.

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Johnson:

Q. Mr. Norlin, how long have you been in Alaska? A. Since 1910.

Q. 1910. When did you first observe this property that is occupied by what you call the Vachon Building? Was that when you first went to work in 1920 for the Nordale hotel? [232]

A. Yes, that I paid any attention to it; yes.

Q. That is the first time you noticed it? And the Vachon building was on the property then, and had been for a long time, hadn't it?

A. I don't know how long it was there.

Q. But it was there then?

A. It was there then.

(Testimony of Albert Norlin.)

Q. Now, you mentioned a hole that you say was about six feet deep, right at the back end of the Vachon building? A. Yes.

Q. Was that a kind of a ditch that ran along the back of the building, or was it just a round hole, or what was it?

A. No, no, it was all along there. Kind of all along from Lacey Street, now, and out towards that ball park there, you know. The kind of a drop and they used to drop things in it.

Q. And this hole extended from Lacey Street over towards the ball park, is that right?

A. Yes, and towards downstream.

Q. Well, when you say "downstream," you mean right along the back of the Vachon building?

A. That is right.

Q. About how far? About the width of the building, would you say?

A. Well, half of the Vachon building, because it was some [233] in the back end.

Q. And this hole extended about half of the width of the Vachon building? A. Yes.

Q. Now, you say they used to keep dogs back of the Vachon building when you were over there?

A. Yes sir.

Q. Now, beyond this hole, from the hole to the river, was there quite a bit of land in between there?

A. Yes, there was, somewhat.

Q. And it was high and dry land, was it, except—

(Testimony of Albert Norlin.)

A. Well, it was kind of sloping.

Q. Yes, but I mean it was dry, except when the water was extremely high, isn't that right?

A. Yes.

Q. And most of that land from the hole down to the river, you say, was filled in with silt from the river, is that right?

A. There was a certain amount of silt coming in there in high water, you know.

Mr. Johnson: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mr. Norlin, I believe you said in response to my question that this depression run in the ground which was five or six feet deep, did you tell me that run from the back—from [234] around Lacey Street opposite the back of the Nordale building, down towards the downstream part?

A. Yes.

Q. Then there was another swale run towards the ball park, is that right?

A. Yes, it ran across to the other side.

Q. Did they dump in both of those—the one towards the ball park?

A. I didn't see them dump towards the ball park, but I see them running from Lacey Street towards the Nordale building, coming downstream. There was a hole there they dumped in.

(Testimony of Albert Norlin.)

Q. Where did the Nordale Hotel dump their ashes and debris?

A. Well, I don't know about ashes, but the rest of the stuff from the Nordale Hotel—over the rail.

Q. Into the river?

A. It didn't go into the river, but on the bank and the high water took it out in the Spring.

Mr. Taylor: That is all.

Recross-Examination

By Mr. Johnson:

Q. Where was the Nordale? That was downstream from the Vachon building? A. Yes.

Q. There were one or two buildings between the Vachon building and the Nordale, isn't that right?

A. There was one, anyway.

Q. You didn't throw any refuse on the lot that the Vachon building sits on, did you?

A. No.

Mr. Johnson: That is all.

Mr. Taylor: That is all.

(Whereupon, Mr. Albert Norlin was excused as a witness and left the witness stand.)

Mr. Taylor: I would like to call Mr. Stanford.

Mr. Johnson: May we have a short recess, your Honor?

The Court: Swear him first.

DAVIS STANFORD

called as a witness on behalf of the Defendants, was duly sworn.

Clerk of Court: Court is recessed until ten after 3:00.

(Whereupon, Court was recessed for ten minutes.)

Direct Examination

By Mr. Taylor:

- Q. Will you state your name, please?
- A. My name is Davis Stanford, Mr. Taylor.
- Q. And where do you live, Mr. Stanford?
- A. I live at 618 5th.
- Q. And how long have you lived in Fairbanks?
- A. Since 1911. [236]
- Q. What is your occupation, Mr. Stanford?
- A. I am a caulkier by trade.
- Q. And what occupation have you followed at Fairbanks?
- A. Well, I does that in between; yes sir. A caulkier doesn't have anything to do at times, so I works around.
- Q. What are you working at now, Mr. Stanford?
- A. Well, nothing particular, Mr. Taylor. Just waiting for a job to come up.
- Q. Now, what are you doing now, Mr. Stanford?
- A. Well, sir, I would do anything at the present time, but I am a caulkier. That is what I follow.
- Q. Caulking river boats or houses?
- A. Yes, sir, anything like that. Houses.

(Testimony of Davis Stanford.)

Q. Have you done anything around Fairbanks?

A. Yes sir, but lawns or anything like that.

Q. Mr. Stanford, do you know where the building on the corner of Lacey Street and First, known as the Nordale building, is? A. On First?

Q. And Lacey?

A. First and Lacey? I know where the Nordale Hotel was.

Q. Well, no. It is a building owned by Mr. Nordale. The Economy Store is in it now.

A. Yes sir. Well, I tell you, sir, I used to. I know it as the Vachon Building, but I didn't know when the Nordale lived down there, and I didn't know anything about the operation [237] of the mills.

Q. It was known as the Vachon building years ago? A. Yes sir, I know that.

Q. Do you know Mr. Waxberg?

A. Oh, yes sir, I do sir.

Q. Do you know where his building is—his workshop? A. I do; yes sir.

Q. Right back of the Vachon building?

A. Yes sir.

Q. Now, were you acquainted with the nature of the ground right back of the Vachon building in prior years?

A. Yes sir, I used to go through there all the time when I worked for Eddy Kehoe, and we used to throw ashes and stuff along that strip there, right where the building was.

(Testimony of Davis Stanford.)

Q. Who is Ed Kehoe?

A. He is dead, now, but he sold out to Wehner.

Q. What was he doing?

A. He was the Scavenger outfit.

Q. When did you go to work for him?

A. I used to do any kind of work around.

Q. What year did you go to work for him?

A. The year before he sold out to Mr. Wehner.

I forgot what year was that. He was here yesterday.

Q. And was the ground from the back of the Vachon building down to the river—was it level?

A. Well, sir, it seemed away beyond the building, but there was quite a hole there—sloped right down to the river.

Q. And would that hole be on the ground immediately back from the Vachon building?

A. Yes sir.

Q. Down to the river?

A. Yes sir, down to the river; yes sir.

Q. And is that where you and Mr. Kehoe used to dump?

A. There; throw some boxes and paper and stuff.

Q. And how often would you dump in there, Mr. Stanford?

A. Oh, perhaps once a month, whenever we got an extra job to do anything like that. We would go down there and take a load of paper, stuff like that. Refuse. We thought it needed it. It looked kind of like it needed filling in there.

(Testimony of Davis Stanford.)

Q. Was there any water in that depression where you threw this debris—refuse?

A. Not in those days. The river comes in there at times, but I didn't go there when the river was up.

Q. How long did you work with Mr. Kehoe?

A. Quite awhile since he bought out from another man named Frank. I worked for him all the time, now and then.

Q. Do you remember about how many years?

A. Oh, I don't really remember. Maybe three or four years.

Q. And during that three or four year period did you dump in [239] that particular place right along?

A. Well, considerably, and then we used to go at the other end where you saw a dust pile and threw stuff around the yard, but we dumped quite a bit in there.

Q. And you stated you felt that place should be filled up because it was low?

A. Yes; we put in there. It was the lowest place, and we thought we would put it in there where it would do some good.

Q. And do you know whether the man who bought Kehoe out—do you know whether he continued dumping in there?

A. When he had anything extra he hated to go on down Second Avenue.

Mr. Johnson: We object to that as incompetent, irrelevant and immaterial. That is hearsay.

Mr. Taylor: That is not hearsay. I asked "do

(Testimony of Davis Stanford.)

you know whether the man that bought Mr. Kehoe dumped in there."

A. Oh, Frank. He dumped in there too, sir. And Mr. Wehner.

Q. Mr. Wehner also dumped in there?

A. Yes sir.

Q. Did—while you was working for Mr. Kehoe, did you build that depression up considerable?

A. Well, naturally. We threw wood and built it up. And other people used to throw in there, too. When we went back down you could see people threw in a lot of boxes and so forth in there. [240]

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Johnson:

Q. Mr. Stanford, this Vachon building that you talk about— A. That is right.

Q. That was on that property—that has been on the property ever since you came to Fairbanks?

A. When I came here; yes, Mr. Johnson.

Q. And you never knew the property before the building was on there, did you? You had never seen it before?

A. I used to go since '12. Every once-in-a-while.

Q. What I am getting at, when you first saw the Vachon property, the building was already on?

A. Yes.

Q. And you came in 1911? A. Yes sir.

Q. And the building was there then, was it not?

A. Yes.

(Testimony of Davis Stanford.)

Q. How long after you came here in 1911 did you go to work for Mr. Kehoe?

A. I can't tell particular, sir, but from the time he had it—from the time he bought from another gentleman by the name of Frank—I worked for him, but I never kept track of the dates.

Q. Was it two years after you came here—three years—ten [241] years?

A. Three or four years; I never kept track of the time.

Q. Three or four years after you came here?

A. Something like that.

Q. That would be along about 1915 or '16?

A. Yes, something like that.

Q. Now, this ditch you speak of?

A. Yes. sir.

Q. You say that ran from—was that in Lacey Street? Did it run down the Lacey Street by the side of the Vachon building?

A. Well, it come something like that, right along by the slough.

Q. Well, was it in back of the Vachon building, or to one side of it?

A. Well, it was really back of the Vachon building.

Q. I see. Well, and it slanted down towards the slough?

A. Down towards the slough, Mr. Johnson; yes sir.

(Testimony of Davis Stanford.)

Q. How far was it from the Vachon building to the slough, or the river, I mean?

A. Really, Mr. Johnson, I don't know.

Q. It was quite a distance, wasn't it?

A. It was quite a distance.

Q. And this ditch you say you were dumping into, that was all on dry land, wasn't it? [242]

A. Well, some places was deeper than others.

Q. Well, I mean it was all above water?

A. Yes, sir.

Q. When the river was at its normal level?

A. Yes sir.

Q. That ditch was all up on dry land, wasn't it?

A. Yes sir.

Q. And you say—how long—you don't know how long you worked for Mr. Kehoe?

A. No, I don't, sir, but from the time he had his outfit bought, he and Mr. Wehner, I worked for both of them.

Q. Would you say it was one year, two years, or three years?

A. I didn't keep track of the time, but you could find out from Mr. Wehner.

Q. When you did dump there, you dumped about once a month?

A. Something like that. When we had extra.

Q. And you would dump other places?

A. We would take it down to the City dump.

Mr. Johnson: That is all.

(Testimony of Davis Stanford.)

Redirect Examination

By Mr. Taylor:

Q. What kind of a vehicle did you use to dump in there?

A. We started with a horse. Mr. Kehoe got a car, and then Mr. Wehner.

Q. Was it a truck? [243]

A. Yes, goose-neck truck.

Q. Did you use both the horse and wagon and also the truck to dump down there, back of the Vachon building?

A. Well, he would use one and then the other. He started with the horse and then finally got rid of the horse and used the car. He didn't get rid of it, but he used the truck more. It was more convenient.

Q. He would just take the truck down and dump it into that depression?

A. Yes, that long strip.

Q. When the water was high, the river was high, would there be water in that depression?

A. Sure, it would, because the water come up on Front Street sometimes.

Mr. Taylor: That is all.

Mr. Johnson: That is all.

Clerk of Court: That is all, Dave.

(Whereupon, Mr. Davis Stanford was excused as a witness and left the witness stand.)

Mr. Taylor: Mr. Main.

CHARLES MAIN

was called as a witness on behalf of the Defendants, and after being duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Charles Main.

Q. And where do you reside, Mr. Main?

A. Down on the corner of First and Noble.

Q. And that is in Fairbanks?

A. Fairbanks.

Q. How long have you resided in Fairbanks, Mr. Main?

A. Ever since the Fall of 1904.

Q. And has that been a continuous residence in Fairbanks?

A. Well, practically. I have been out on prospecting trips and run a roadhouse 14 miles from here several years, one time.

Q. But your—you always felt this was your home and you were here even when you were on trips away, you would come back to Fairbanks?

A. Yes.

Q. Are you acquainted with the land lying immediately back of the building on the South—or, on the Northwest corner of the intersection of First and Lacey Street? A. Yes.

Q. Formerly known as the Vachon building? And do you remember the contour of the land back of that building when you came here?

A. Not too well at that time. [245]

(Testimony of Charles Main.)

Q. What was on that property, or where the Vachon building is now—what was on that lot at the time you came here?

A. Well, I couldn't say, myself. I know there was two or three mills there, but to testify just where they sit, I wouldn't say where they sit.

Q. Did you ever go down there and see how they got the logs to the mill?

A. I seen the big eddy down in that section where they took the logs out; yes.

Q. Is that what—did they call that the big eddy?

A. Well, that is what we called it.

Q. And how far did that big eddy run in from the main part of the river, Mr. Main?

A. Well, I figure that at that time that eddy was probably in the neighborhood of thirty or fifty feet wide. It run down—the cut, at that time, to the best of my knowledge, hit down pretty close to the corner of the Fairview Hotel, and make a swing and come back there and made a swing right around in the eddy.

Q. Was that fairly protected in there, then, as a place to keep the logs?

A. Well, it was, because the current was over on the other side and this land above, they had built the bar above and they built that bar up with slabs and sawdust from those mills at the time I recollect, but the current stayed out [246] and that eddy stayed there practically continuously. The current missed it.

(Testimony of Charles Main.)

Q. Now, as the years went by, Mr. Main, did you notice any difference in that eddy—in that part of it where they pulled the logs up?

A. Yes, I noticed a big difference there. The eddy evidently had filled up some, especially out from the back end of the building, much more than it did right under the building, it seemed like. It seemed like that bank built up out from the building quite a bit. Because it was deep water out there at that time.

Q. Was the bank built up enough to prevent the water from coming in under the back of the Vachon building?

A. No, except maybe in real low water.

Q. And about—do you remember how far it was from the high bank where the mill set down to the surface of the eddy, the surface of the water?

A. No, I do not.

Q. Now, later what you call the eddy—the big eddy filled up, did it not, Mr. Main?

A. Filled up; yes.

Q. Do you know what it was filled up with?

A. Well, I imagine—I have seen many eddys fill up with high waters and rubbish thrown in from people, and I imagine it is filled up with both rubbish and silt. Any time you [247] made an eddy the water lays there and settles and it doesn't fill up any hole—it fills up any time.

Q. Do you know if the high water—how much silt would be deposited each high water?

(Testimony of Charles Main.)

A. Well, in an eddy like that it doesn't take a high water to make a big silt. It is settling all the time, as long as the water stands there, it fills up itself.

Q. But after it got filled up to the top of the water, it would require high water to make any further deposits in there, would it not?

A. Yes.

Q. And then, to fill up as high as the back of the Vachon building would require exceptionally high water over quite a length of time, would it not?

A. Yes.

Q. Did you ever see any rubbish dumped down in that? A. Yes, I have.

Q. Was that quite often?

A. Well, I seen it in there several Springs, but I have seen rubbish in there several Springs, but you find that back of everybody's house. I couldn't say whether it was ever buried there, but I could say I had seen it there many Springs; rubbish in there.

Q. Was that usually the accepted condition in the spring?

A. It is the same yet, in the back yards. [248]

Mr. Taylor: You may take the witness.

Mr. Johnson: No questions.

Mr. Taylor: That is all.

(Whereupon, Mr. Charles Main was excused as a witness and left the witness stand.)

Mr. Taylor: I would like to call Mr. Birklid for just a few questions.

WILLIAM BIRKLID

one of the Defendants, was called as a witness on his own behalf, and after being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. Your name, please?

A. William Birklid.

Q. Where do you live, Mr. Birklid?

A. Fairbanks.

Q. And what is your occupation?

A. Carpenter.

Q. Are you in business here?

A. I am.

Q. Who with? A. Waxberg.

Q. That is a carpenter contracting business?

A. Waxberg and Birklid. [249]

Q. Now, you were a partner with Mr. Waxberg a year ago this Spring, were you?

A. I was.

Q. And were you in Fairbanks at the time of the high water last Spring? A. I was.

Q. And you were down at your place of business during that high water? A. Yes, we were.

Q. About how much water got into your building down there, Mr. Birklid?

A. We measured it and it measured about sixteen inches inside the building.

Q. And how long did it set there? Before the water fell?

(Testimony of William Birklid.)

A. Gosh, I don't remember the exact days. But we lost about a weeks work, or more, out of the shop there, so I guess it was about four or five days in the shop. I don't remember the exact dates.

Q. Now, after the water went down, how much sediment was left on the walls of the shop?

A. On the floor?

Q. Umhum?

A. Well, in spots there wasn't any, but there was a little in other places. We washed it out with water and just swept it out. There wasn't a great deal. [250]

Q. Was there any deposits of sediment outside around the building?

A. Well, there wasn't a great deal to notice. It was quite muddy there, anyway, but then on the back, as far as I could see, where the grass was growing, there wasn't any sediment at all.

Q. I hand you Defendants' Exhibit "M," that was taken right back of the shop.

Mr. Johnson: Defendants' Exhibit, did you say?

Q. Plaintiffs' Exhibit "M." Do you recognize the location of that photograph, Mr. Birklid?

A. To be honest with you, I would say I couldn't recognize it. That may be right back there; yes. But that is—(interrupted).

Q. Did you hear the testimony of Mr. Griffin this morning? A. No.

Q. Were you present at your shop yesterday when I went down there? A. Yes, I was.

(Testimony of William Birklid.)

Q. And do you remember going back of the building—back of your building? A. Yes.

Q. Where the grass is? A. Yes, I do.

Q. How deep is that grass? How high is it?

A. Oh, it varies from two to three inches. [251]

Q. Now, at the time you were there yesterday, was there any evidence of any silt in that grass?

A. No, I couldn't say that there was.

Q. There was no perceptible change in the contour of the ground because of that flood?

A. No.

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Johnson:

Q. Mr. Birklid, the ground in back of your building has been covered with a great deal of snow all winter, has it not? A. It has.

Q. And that snow has since melted and gone away, is that correct? A. That is.

Mr. Johnson: That is all.

Redirect Examination

By Mr. Taylor:

Q. Just a moment. I would like to ask you just one more question. Now, Mr. Birklid, the footings of your building—how are they constructed?

A. Well, they are constructed with mud pads and posts set on the mud pads.

Q. And how deep did you go for the footing?

A. Set it on top of the ground. Just leveled it off a little. [252]

(Testimony of William Birklid.)

Q. Did you put the top of the footings just below the general level of the ground?

A. No.

Mr. Taylor: That is all.

Mr. Johnson: That is all.

(Whereupon, Mr. William Birklid was excused as a witness and left the witness stand.)

Mr. Taylor: The Defendant rests, your Honor.

Mr. Johnson: The Plaintiffs' rest.

The Court: How much time do you gentlemen want for argument?

Mr. Taylor: Not very long.

Mr. Johnson: Well, I don't think it should take over thirty or forty-five minutes, your Honor. I would like to have at least forty-five minutes. If I don't do that much, that will be all right.

The Court: All right. I will limit you to forty-five minutes. Do you want the argument reported?

Mr. Johnson: No; I am not particular.

Mr. Taylor: Not necessarily, your Honor.

(Whereupon, the Court heard arguments by counsel, but they were not reported by the Court Reporter; and after arguments were completed, the Court took the matter under advisement.)

United States of America,
Territory of Alaska—ss.

I, Margaret M. Wilkins, of Fairbanks, Alaska, hereby certify:

That I am the Official Court Reporter in the District Court for the Territory of Alaska, Fourth

Division; that I attended the trial of the cause entitled "Alfheld Hjalmar Nordale and Arnold Mauritz Nordale, co-trustees of the Nordale Estate Trust, Plaintiffs, versus A. E. Waxberg and William A. Birklid, Defendants, Number 5824," at Fairbanks, Alaska, on May 9 and 10, 1949, and took down in Stenotype the testimony given and proceedings had thereat; that I thereafter transcribed said Stenotype notes, and the foregoing pages, numbered 1 to 253, both inclusive, comprise a full, true and correct statement and transcript of such testimony and proceedings, to the best of my ability.

Dated at Fairbanks, Alaska, this 1st day of August, 1949.

/s/ (MRS.) MARGARET M.
WILKINS,
Official Court Reporter.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above-entitled Court, do hereby certify that the following list comprises all Pleadings, Motions, Orders, etc., filed in the above entitled cause, viz.;

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Witness my hand and the seal of the above-
entitled Court, this 13th day of September, 1949.

[Seal] /s/ JOHN B. HALL,
Clerk of the District Court, Fourth Judicial Divi-
sion, Territory of Alaska.

[Endorsed]: No. 12356. United States Court of Appeals for the Ninth Circuit. A. E. Waxberg and Wm. A. Birklid, Appellants, vs. Alpheld Hjalmar Nordale and Arnold Mauritz Nordale, co-trustees of the Nordale Estate Trust, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Fourth Division.

Filed September 15, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12356

A. E. WAXBERG and WM. A. BIRKLID,
Appellants,
vs.

ALFHELD HJALMAR NORDALE and AR-
NOLD MAURITZ NORDALE, co-trustees of
the Nordale Estate Trust,
Appellees.

STATEMENT OF POINTS

The Appellants state that the points upon which they intend to rely on this appeal are as follows:

1. That the Court erred in overruling Appellants' objections to the introduction of evidence at

pages 13, 152, 153 and 154 of the Transcript of Trial as numbered by the official Court Reporter of the District Court.

2. That the Court erred in overruling Appellants' Motion to Dismiss at page 165 of the Transcript of Trial as numbered by the official Court Reporter of the District Court.

3. That the Court erred in overruling Appellants' Motion for a new Trial at page 71 of the original certified record.

4. That the Court erred in its Findings of Fact and Conclusions of Law, pages 75 to 79 of the original certified record.

5. That the judgment of the Court was contrary to the evidence and to the law.

/s/ WARREN A. TAYLOR,
Attorney for Appellants.

Service and receipt of a copy of the foregoing Statement of Points is hereby acknowledged this 12th day of September, 1949.

/s/ MAURICE T. JOHNSON,
Attorney for Appellees.

[Endorsed]: Filed Sept. 15, 1949.

[Title of Court of Appeals and Cause.]

To: The Clerk of the United States Court of Appeals for the Ninth Circuit

DESIGNATION OF RECORD

The Appellants hereby designate by reference to the pages of the original certified record the following portions of said record which are material to the consideration of this appeal:

Amended Complaint pp. 1-11
Answer to Plaintiffs' Amended Complaint pp. 12-13
Motion for New Trial p. 71
Findings of Fact and Conclusions of Law pp. 75-79
Judgment pp. 80-81
Notice of Appeal p. 86
Motion for an Order Extending Time to File,
Record and Docket Cause p. 98
Order Extending Time to File, Record and
Docket Cause p. 99
Stipulation and Attached Exhibit pp. 100-101
Designation of Record p. 102
Entire Reporter's Transcript of Trial
All of the Exhibits admitted in evidence at the trial
/s/ WARREN A. TAYLOR,
Attorney for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 15, 1949.

[Title of Court of Appeals and Cause.]

To: The Clerk of the United States Court of Appeals for the Ninth Circuit

COUNTER DESIGNATION OF RECORD

The Appellees hereby designate by reference to the pages of the original certified record the following portions of said record which they consider are material to the consideration of this appeal, and they request that said portions be printed in the record:

Stipulation in Re Filing Amended Complaint p. 32
Order in Re Filing An Amended Complaint . . p. 33
Stipulation in Re the Deposition of Fred

Parker, Sr. p. 34
Opinion of the Honorable Harry E. Pratt,
Trial Judge p. 64

Dated this 15th day of September, 1949.

/s/ MAURICE T. JOHNSON,
Attorney for Appellees.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 19, 1949.

